

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

MARY RUTAN HOSPITAL,

Plaintiff,

v.

NEXTGEN HEALTHCARE INFORMATION  
SYSTEMS, LLC,

Defendant.

Civil Action 2:13-cv-01069

District Judge Gregory L. Frost

Magistrate Judge Mark R. Abel

**PRELIMINARY EXPERT REPORT OF JEFF C. PARMET**

In accordance with Federal Rule of Civil Procedure 26(a)(2), the following is my written preliminary report describing the subject matter areas, background, and opinions about which I expect to testify in the present litigation if called upon to do so.

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## **II. TABLE OF ATTACHMENTS**

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<b>Attachment 1</b>	CV of Jeff C. Parmet
<b>Attachment 2</b>	Methodology and Factual Findings
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<b>Attachment 5</b>	List of Defects Closed Citing Need to Upgrade

### III. QUALIFICATIONS AND COMPENSATION

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1. I, Jeff C. Parmet, am the principal of DisputeSoft, an independent consulting firm in Potomac, Maryland specializing in software dispute consulting, e-discovery and computer forensics.
2. I hold a BA degree from Cornell University and a JD degree, *cum laude*, from The University of West Los Angeles (UWLA) School of Law (formerly San Fernando Valley College of Law). I have more than 40 years' experience in the information technology profession with emphasis during the past 16 years on software failure disputes, software intellectual property disputes, e-discovery, and computer forensics.
3. My experience as a consulting or testifying expert includes numerous disputes involving medical records, imaging applications, billing systems, system architecture, custom development, package implementation, and software release management.
4. I am thoroughly familiar with a wide array of established software implementation methodologies, both for custom-developed software as well as Commercial Off-the-Shelf ("COTS") software. I have been heavily involved in the implementation of such systems, including requirements gathering, analysis, design, construction, data conversion, migration from legacy systems, testing, training, and implementation.
5. During the earlier years of my career, I worked as a programmer, project manager and system integrator on dozens of information technology ("IT") projects, and attended numerous software engineering and project management training courses. Since becoming a litigation consultant 16 years ago, I have reviewed project management and software engineering standards and practices, and I have considered the issue of

adherence to such practices on countless occasions.

6. During the past 16 years, I have been designated as a consulting or testifying expert, both for vendors and customers, in more than 70 software disputes with claims involving late, inadequate or incomplete delivery.

7. My 40+ years' experience in the IT field includes countless reviews of and negotiations involving professional services agreements ("PSAs"), software license agreements ("SLAs") and software maintenance and support agreements ("SSAs").

8. My qualifications, publications and prior testimony are listed on my CV, which is included in this report as **Attachment 1**.

9. I am being compensated at the rate of \$450 per hour for the work I have performed on this engagement. My compensation is in no way contingent on the outcome of this matter.

10. I am the person solely responsible for the opinions contained in this report. I have been assisted in this matter by DisputeSoft staff members Anne Ackerman, Thomas Ashley, Brendan McParland, Isaac Pflaum, and Josh Siegel. All analysis and other assistance in connection with the preparation of this report was performed and provided by me or by DisputeSoft staff under my supervision and direction. References to "I" or "me" concerning analysis or other assistance in preparing this report include these staff members. While these staff members assisted me in the preparation of this report, all opinions expressed are mine and mine alone.

#### **IV. SCOPE OF WORK**

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11. I have been retained by the law firm Thompson, Dunlap & Heydinger, Ltd., counsel for Mary Rutan Hospital (“MRH”), to serve as an independent technical expert in this suit brought by MRH against NextGen Healthcare Information Systems, LLC (“NextGen”). I have been requested to do the following:

- 11.1. Review and analyze the software that NextGen licensed for MRH’s use (the “Software”), the documentary record, and all available data pertaining to NextGen’s efforts to support and maintain the Software;
- 11.2. Reach findings and opinions concerning whether the Software functioned in a manner substantially consistent with that described in the various manuals, user guides, and training materials provided by NextGen in conjunction with delivery of the Software (the “User Materials”);
- 11.3. Reach findings and opinions concerning whether NextGen supported and maintained the Software in a manner substantially consistent with that described in the Software License & Services Agreement entered into by and between MRH and NextGen on or about September 28, 2010 (the “Agreement”);
- 11.4. Prepare and submit an expert report detailing my findings and opinions (the “Preliminary Expert Report of Jeff C. Parmet” or “Preliminary Report”); and
- 11.5. Prepare and submit a second expert report supplementing the findings and opinions set forth in this Preliminary Expert Report (the

“Supplemental Expert Report of Jeff C. Parmet” or “Supplemental Report”) after having reviewed and analyzed forthcoming additional materials that NextGen is in the process of producing to counsel for MRH.

## **V. MATERIALS REVIEWED**

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12. I have reviewed and relied upon the following materials in preparing my expert opinions:

12.1. MRH's Complaint for Breach of Contract and Money Damages, dated September 23, 2013;

12.2. The Agreement, and Appendices 1-3 and Attachment A thereto;

12.3. The NextGen Money Back Guarantee ("Money Back Guarantee"), dated September 30, 2010;

12.4. Addendum #1 to the Agreement ("Addendum"), dated September 30, 2010;

12.5. An Excel spreadsheet produced by NextGen in response to MRH's Second Request for Production of Documents, titled "Mary Rutan - SDE Data Extract" ("SDE Data Extract Spreadsheet"), containing data relevant to NextGen's efforts to resolve Software defects and respond to Software-related incidents reported by MRH;

12.6. Certain materials available on the NextGen Client Support Center website, including:

12.6.1. Release notes for various versions of the applications comprising the Software, specifically:

12.6.1.1. The Knowledge Base Module ("KBM");

12.6.1.2. The Electronic Health Record Module ("EHR"); and

12.6.1.3. The Electronic Practice Management Module



(“EPM”);

12.6.2. Data contained within NextGen’s incident tracking system (known as “BMC Service Desk Express”) pertaining to Software-related issues reported by MRH;

12.7. The NextGen EHR/EPM 5.6.9.12/KBM 7.9.1 Production Environment (“Production Environment”) and its associated database, titled “NGPROD”;

12.8. Certain manuals, user guides, and training materials provided to MRH by NextGen in conjunction with the Software (“User Materials”), including:

12.8.1. NextGen EHR User Guide, Version 5.6 SP1;

12.8.2. NextGen EHR e-Prescribing Functionality Guide, Version 5.6 SP1;

12.8.3. NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook;

12.8.4. NextGen EPM Background Business Processor Guide, Version 5.6 SP1;

12.8.5. NextGen EPM User Guide, Version 5.6 SP1;

12.8.6. NextGen ICS Guide, Version 5.6 SP1; and

12.8.7. NextGen Implementation Start-Up Guide.

12.9. NextGen Statement of Work (“SOW”) prepared for MRH, dated June 17, 2010;

12.10. Notes taken during the course of interviews with MRH fact

witnesses, including Robert Reynolds, Cori Orahoad, and Barbara Bowers;

12.11. Deposition testimony provided by the following MRH and NextGen fact witnesses, as well as all accompanying exhibits:

12.11.1. Mr. Jeff Waldron, sworn on September 17, 2014;

12.11.2. Mr. Stephen P. Kilson, sworn on September 26, 2014;

12.11.3. Ms. Dee Tripline, sworn on September 29, 2014;

12.11.4. Mr. Robert Reynolds, sworn on October 28, 2014;

12.11.5. Mr. Shawn Shutt, sworn on October 28, 2014;

12.11.6. Ms. Barbara Bowers, sworn on October 29, 2014;

12.11.7. Ms. Cori Orahoad, sworn on October 29, 2014; and

12.11.8. Ms. Denise E. Woodruff, sworn on October 30, 2014.

13. As I have been informed by counsel that the parties have agreed to produce additional materials, I expect to supplement this Preliminary Report, I reserve the right to review and rely upon both those additional materials as well as any additional information or materials that may be provided to me in the course of discovery, including any information or materials relied upon by any of NextGen's experts.

## **VI. METHODOLOGY AND SUMMARY OF FACTUAL FINDINGS**

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14. In this report, I reviewed the NextGen EPM, EHR, and KBM software programs (“Software”), and well as the associated databases.

15. I used a methodology that is generally accepted within the software industry to assess MRH incidents submitted to NextGen over the course of the project. In particular, I reviewed and analyzed:

15.1. All incidents remaining unresolved for at least 30 days as of September 23, 2013, the date on which MRH filed suit against NextGen;

15.2. Those incidents remaining unresolved for at least 30 days as of September 23, 2013, related to material defects with the Software (“30+ Day Defects”), including:

15.2.1. Incidents that were not resolved within a reasonable timeframe during the 12 months after the Agreement’s Effective Date (the “Warranty Period”);

15.2.2. Incidents related to functionality associated with defective KBM templates, including NextGen’s custom templates;

15.2.3. Incidents pertaining to billing errors;

15.2.4. Incidents pertaining to demographic errors;

15.2.5. Incidents pertaining to e-Prescribing; and

15.2.6. Incidents incorrectly classified by NextGen as “enhancements requests.”

15.3. Incidents that NextGen closed prior to the release of KBM Version 8.3, without having resolved the reported issue, citing instead the need to

upgrade to a newer version of the Software.<sup>1</sup>

15.4. Incidents submitted by MRH due to the fact that NextGen closed a previously reported incident without having actually resolved the underlying issue.

16. A detailed description of my methodology is included as Attachment 2.

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<sup>1</sup> The basis for my decision to limit the scope of my analysis to those incidents closed prior to the release of KBM Version 8.3 is as follows. I understand that NextGen licensed KBM Version 7.9 and EHR/EPM Versions 5.6 to MRH. I further understand that NextGen was only obligated to support the three most recently released versions of the Software. Therefore, NextGen's obligation to support KBM Version 7.9 would have expired upon the release of KBM Version 8.3. Finally, as it appears that EHR/EPM Versions 5.8 are the latest released versions of those modules, NextGen is still obligated to support these modules at the present time. I explain this rationale in greater detail below.

## VII. SUMMARY OF OPINIONS

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17. Based on my review and analysis, as well as my education, training and experience, I have reached the following preliminary opinions to a reasonable degree of professional certainty as explained in greater detail in the remainder of this report.

18. The NextGen Software did not function in the manner described in the User Materials. I identified many functional defects relating to KBM Templates, e-Prescribing, Billing, and Demographics, among other areas of system functionality. Collectively, these defects rendered the NextGen Software unfit for its intended purpose.

19. NextGen failed to meet its contractual obligations to fix material defects in a timely manner. My analysis of incident reports and related materials leads me to conclude that NextGen failed to resolve defects within 30 days, not only during the Warranty Period but also over the course of the entire MRH project. Many defects were still unresolved even after being open a year or more. Accordingly, NextGen did not meet its responsibility to resolve defects within a reasonable amount of time.

20. NextGen failed to support MRH's licensed version of the KBM software, version 7.9 ("KBM Version 7.9"), in accordance with the terms of the Agreement and standard industry practice by, *inter alia*, failing to fix defects in KBM Version 7.9 before KBM Version 8.3 was released. The Agreement requires NextGen to support the currently released version of its software as well as two prior major releases.<sup>2</sup> Since NextGen did not release a "Version 8.2" of the KBM application, it should not have discontinued support for KBM Version 7.9 prior to releasing KBM Version 8.3. Yet NextGen

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<sup>2</sup> See Agreement, § 12(a), (e): "Maintenance Services on anything but the most current general-released version of the Software and the two general-released versions immediately prior to same."

repeatedly pushed MRH to upgrade to a later release instead of fixing known defects in KBM Version 7.9, and by improperly closing incidents without having actually fixed the associated defect.

21. Based on my understanding from counsel, the parties in this Matter have agreed that NextGen intends to produce additional materials upon which I would customarily rely for purposes of analyzing the questions I have been asked to address in this litigation (the “Supplemental Materials”). I submit this report with the full expectation that I will be provided an opportunity to supplement this report after having reviewed and analyzed the forthcoming Supplemental Materials. Therefore, in order that I might submit this initial report in a timely fashion, I have necessarily based my opinions, in part, upon assumptions and logical inferences, which I note where appropriate throughout this report. In the event that my review and analysis of the Supplemental Materials requires me to correct or revise any such assumptions or logical inferences, I expect to note any such instances in my supplemental report where appropriate, and amend any opinions set forth in this report that are based upon such assumptions and logical inferences accordingly.

## VIII. OPINIONS AND ANALYSIS

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### A. THE NEXTGEN SOFTWARE DID NOT FUNCTION IN THE MANNER DESCRIBED IN THE USER MATERIALS.

22. The NextGen Software did not function in the manner described in the User Materials. Hospital system software needs to be held to a higher standard of quality than software used in other settings. In other industries, software defects may cause inconvenience, loss of time and money, and productivity drops, among other problems. In a hospital setting, however, software defects can lead to misdiagnoses, malpractice, personal injury, and, in the worst case, death. Effective and expedient defect resolution is tantamount in an industry where lives are at stake.<sup>3</sup> Moreover, lack of efficiency and usability in medical record software has been noted as a major factor impeding its wider adoption in the United States.<sup>4</sup>

23. Although the term “defect” is not explicitly defined in the Agreement or Money Back Guarantee, NextGen warranted that its Software would “substantially perform the material functions described in the User Materials” and “will materially perform in accordance with its User Materials.”<sup>5</sup> The failure of software to perform

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<sup>3</sup> See “Safely Implementing Health Information and Converging Technologies,” Sentinel Event Alert 42, The Joint Commission, December 11, 2008, at 2 (“Patient safety is also impaired by the failure to quickly fix technology when it becomes counterproductive, especially because unsolved problems engender dangerous workarounds.”).

<sup>4</sup> See “Defining and Testing EMR Usability: Principles and Proposed Methods of EMR Usability Evaluation and Rating,” HIMSS EHR Usability Task Force, June 2009, at 1 (“Electronic medical record (EMR) adoption rates have been slower than expected in the United States, especially in comparison to other industry sectors and other developed countries. A key reason, aside from initial costs and lost productivity during EMR implementation, is lack of efficiency and usability of EMRs currently available.”).

<sup>5</sup> See Software License & Services Agreement at § 19 (“Company also grants to You a limited warranty for one (1) year from the date of Software Installation that the Software, unless modified by or on Your behalf or otherwise employed in a manner not permitted under this Agreement, will substantially perform the material functions described in the User Materials when operated on Hardware and with the Third Party

according to established requirements or specifications is consistent with standard industry definitions of the term “defect.”<sup>6</sup> Since software requirements may be defined explicitly or implicitly, software defects may be explicit or implicit.<sup>7</sup>

24. Information entered into the Knowledge Base Model (“KBM”) application was not accurately recorded in patients’ electronic health records. This type of defect in KBM Version 7.9 has the potential to create major patient care risk which could lead to at a minimum inconvenience, and at worst malpractice or even death. An operation could be performed on the wrong side of the body, the incorrect or prior diagnosis could be saved to the patient’s medical record, or the wrong medication could be prescribed.

Additionally, it is my understanding from discussions with MRH staff that Software billing issues substantially increased the risk that MRH might incur fines and refunds due back to insurers.

25. I found that the Software was defective with respect to template, e-Prescriptions, billing, and demographics-recording functionality, among other areas. Based on my conversations with MRH staff, problems with these key areas of system functionality could adversely impact patient health, insurance reimbursements, and hospital revenues. I cover each category of defect in detail below.

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Software purchased from, or pre-approved in writing by, Company in accordance with the User Materials”); *see also* Money Back Guarantee, p. 2: “‘The Software will work properly’ means the Software will materially perform in accordance with its User Materials during the Warranty Period and throughout the time You are current in Your payment for Software Maintenance Services.”

<sup>6</sup> *See, e.g.*, Guide to the Software Engineering Body of Knowledge (“SWEBOK”), Version 3.0, p. 10-10, defining “defect” as “[a]n imperfection or deficiency in a work product where that work product does not meet its requirements or specifications and needs to be either repaired or replaced.”

<sup>7</sup> *See, e.g.*, “Understanding the Implicit Requirements of Software Architecture” (available at: <https://dandouglas.wordpress.com/2009/08/16/understanding-implicit-requirements-of-software-architecture>); “The Perils of Ignoring Implicit Requirements” (available at: <http://www.prolifogy.com/articles/implicit-requirements>).



**i. THE SOFTWARE WAS DEFECTIVE IN SEVERAL RESPECTS, INCLUDING FUNCTIONALITY RELATING TO KBM TEMPLATES, BILLING, E-PRESCRIBING, AND DEMOGRAPHICS.**

26. Based on my review of the 30+ Day Defects, I have determined that the Software was defective in several respects, including functionality relating to KBM templates, Billing, e-Prescribing, and Demographics.

27. A complete listing of the 30+ Day Defects is included as Attachment 3.

**Defects Relating to KBM Templates**

28. In my review of the 79 30+ Day Defects, I have determined that 43 (~54%) defects related to defective KBM templates. Defects within templates can lead to billing errors and incorrect information being permanently recorded on a patient's medical record.

29. For instance, if the results of a urine analysis are not recorded in a template or a lymphatic physical exam is deleting itself from the documentation, then the patients' record is inaccurate. Additionally, certain template defects result in incorrect billing while others describe error messages that prevent the provider from accessing important patient information.

30. Additionally, "tab 29" in the SDE Data Extract Spreadsheet appears to contain data from NextGen's own defect resolution system database. The spreadsheet lists several template problems, including a "severity," and "priority" classification.

31. Several template problems were opened in prior releases of the KBM module that remained unresolved for the duration of MRH's time using the Software.

32. A complete list of 30+ Day Defects related to defective KBM templates is included as Attachment 4.

### Defects Relating to Billing

33. In my review of the 79 30+ Day Defects, I determined that 6 defects (~ 8%) relate to billing.

34. Incidents related to billing include, among others, examples of incorrect billing codes, the inability to process charges to the “Superbill” (a standard form used by hospitals to record services rendered which is submitted to insurers), and incorrect calculations of medication units.

35. Based on my discussions with MRH staff, it is my understanding that improper billing can result in a hospital receiving claim edits and denials in addition to incurring fines and penalties. Further, it is my understanding that MRH likely incurred such penalties due to defective billing functionality. I will supplement my opinion in this area, pending the production of the Supplemental Materials and further discussion with key MRH staff unavailable to me during my analysis and drafting of this report.

36. A detailed listing of the 30+ Day Defects pertaining to billing errors is included in the table below:

Incident #	Incident Description	Incident Resolution
1016341	“version 5.6 sp1 ud5, KBM 7.9 sp1 when in the gyn quick exam template and choosing the wet prep check box and then submitting to superbill it will not process any charges to the superbill”	“This issue has been reviewed and determined to be resolved in KBM 8.0 SP1 and higher. Please contact Support to schedule an upgrade if you are on a version of KBM lower than 8.0 SP1.  Thank you for using NextGen Support.”
1064494	“We just converted to 5010 billing and we are receiving claim edit rejections: see attachment. Ansi 5010 Requirement: Special Program code (2300 CLM12) is invalid EPSDT or CHAP (01)”	“Your issue has been resolved in the current general release 5.7, which is now available for download from the NextGen website. Thank you.”
1182309	“We need to find if there is a trigger that is automatically putting a default rendering on chart. She would like to see if there is any trigger or setting in EMR that could do this. It is always a nurse who has last touched the	“This seems to be coming from the patient table. There is some action being taken to have the rendering provider field in EPM become populated. We enabled auditing via NGAudit to keep track of changes made. After a week of monitoring, there have been

Incident #	Incident Description	Incident Resolution
	chart when the default rendering is populated.”	no other records of this issue. If this comes up again, Cori will open a ticket in reference to this one.”
1233368	“Claim is splitting out into two claims. Not different providers. Enc 438606 has 2 charges: one has an ERA payment stored with it and the other one does not. We have been waiting to get the trigger for prob 22746 installed since last November (tk 1185311).”	“I applied the data clean up for problem 22746 and Alyce gave the OK to close this ticket.”
1315971	“This is in reference to closed ticket number 1227548. I need this request re-opened [sic] please. I need a report that I can export in a pipe delimited [sic] format for all self pay encounters that mimicks [sic] the EDI file without changing the billing status of the patient account. Can someone contact me regarding this matter. I understand that this may be a billable service. screen prints of the report attached.”	“Created report for client.”
1347995	“On the Proc joint injection pop up in the ortho suite of templates, it is not calculating the units correctly for J0702 Betamethasone. If you give 1mL of 6mg it should be 2 units billed. If you give 2 mL then 4 units should be billed. It is only billing 1 unit no matter how many mL given.”	“This issue was reviewed and resolved in KBM 8.3. Please upgrade to the latest version KBM to receive the fix for this issue.”

### Defects Relating to e-Prescribing

37. In my review of the 79 30+ Day Defects, I determined that 6 defects (~8%) relate to e-Prescribing.<sup>8</sup>

38. I understand that in the state of Ohio software must meet dual-authentication requirements as required by the Ohio Board of Pharmacy (“OBOP”).<sup>9</sup> NextGen achieves this dual-authentication requirement via its “End of Day Report.”

<sup>8</sup> SDE Data Extract Spreadsheet.

<sup>9</sup> Available at: [http://www.clinisync.org/public/images/stories/e-Prescribe\\_White\\_Paper\\_Final\\_8\\_15\\_12.pdf](http://www.clinisync.org/public/images/stories/e-Prescribe_White_Paper_Final_8_15_12.pdf); pp. 5 & 16.

39. Two e-Prescribing defects prevented MRH from running End of Day Reports.<sup>10</sup> In its Ambulatory Questionnaire Responses, NextGen claimed that “NextGen EHR can support the End of Day Report as required by the Ohio Board of Pharmacy.”<sup>11</sup>

The inability to print these reports prevented MRH from meeting a requirement of dual-authentication for prescriptions as required by the OBOP.<sup>12</sup>

40. Other examples of e-Prescribing incidents describe the inability to e-Prescribe to the mail order pharmacies and error messages preventing MRH from processing e-Prescriptions. For example, on June 22, 2011 MRH submitted Incident #856621, indicating that they are “unable to [*sic*] eprescribe to the mail order pharmacies.”<sup>13</sup> On July 25, 2011 NextGen resolved this issue, and wrote the following comment:

“[C]onnected and checked the enroll/unenroll dates in surescripts\_pharmacy\_mstr and pharmacy\_mstr. Some NULL values were updated.”<sup>14</sup> I understand from Robert Reynolds that Dee Tripline, NextGen’s project manager, explicitly described this issue to MRH as a failure on the part of NextGen to ensure that its Software could be updated with new mail order pharmacy entries. Thus, NextGen acknowledged that the Software’s e-Prescribe functionality was defective.

41. The failures of the Software related to e-Prescribing were particularly difficult for MRH staff to work around. I understand from conversations with MRH staff that in a normal workflow, nurses at MRH would have the ability to initiate e-Prescribe medications for patients. While a nurse could enter an e-Prescription, the Software

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<sup>10</sup> SDE Data Extract Spreadsheet, sheet 24, row 410.

<sup>11</sup> NextGenProd00010049.

<sup>12</sup> Available at: [http://www.clinisync.org/public/images/stories/e-Prescribe\\_White\\_Paper\\_Final\\_8\\_15\\_12.pdf](http://www.clinisync.org/public/images/stories/e-Prescribe_White_Paper_Final_8_15_12.pdf),; pages 5 & 16.

<sup>13</sup> SDE Data Extract Spreadsheet, sheet 24, row 108.

<sup>14</sup> SDE Data Extract Spreadsheet, sheet 24, row 108.

workflow would prevent the e-Prescription from being sent to the Pharmacy until it was later approved by a doctor. This workflow process is authorized by the OBOP. The Software, however, allows nurses to send out e-Prescriptions unilaterally, without obtaining a doctor's sign-off. This process is not authorized by the OBOP. In order to legally e-Prescribe medications, MRH had to disable the functionality that allowed nurses to submit e-Prescriptions, which created additional work and caused inconvenience for nurses and physicians alike.

42. A detailed listing of 30+ Day Defects pertaining to e-Prescribing errors is included in the table below:

Incident #	Incident Description	Incident Resolution
851461	"[P]rinting an eprescribe crystal report and some users aren't getting the pop up calander [sic] to choose the dates."	"Advised that the client run Vcp.exe /r to re-register NextGen on the server with the issue.  If you have no further questions, I will set this ticket to close tomorrow 7/15 at 5:30 PM Eastern"
856621	"Unable to eprescribe to the mail order pharmacies. The local pharmacies which are updated in the pharmacy download are fine. However, the mail order pharmacies which I believe are updated with the formulary download are still not allowing eprescribing....it tells you that the pharmacy is not set up to receive eRx. The providers ARE enrolled with the SureScripts and RxHub...and the locals pharmacies which update the SureScripts service levels are fine. So it appears that that issue is still with RxHub. example attached"	"Connected and checked the enroll/unenroll dates in surescripts_pharmacy_mstr and pharmacy_mstr. There were some NULL values that were updated. Permission granted to close this ticket."
976600	"They would like to get moving on the HQM registry wants MU 2012"	"4/19 - HQM Implementation complete... closing ticket...."
1193322	"The client is calling to report that their Surescripts is down - and they are unable to send any prescriptions to the pharmacy."	"This issue has successfully been resolved by NextGen & SureScripts."
1276028	"Rx Hub is producing Errors in Communication Services. I rebooted the server and restarted the services and it is still erroring out."	"This problem has been repaired by SureScripts."

Incident #	Incident Description	Incident Resolution
1289469	<p>“Version 5.6.9.12 KBM 7.9 SP1</p> <p>I have an end of day rx report not pulling two e-prescribed medications onto the report at all. The medications are insulins. I have verified that insulin will pull to the report. I have verified that the medications are not pulling to any other providers report for that day. I have reviewed the dispense history of the medications.”</p>	<p>“Your issue has been resolved in the current general release 5.8 UD1, which is now available for download from the NextGen website. Thank you.”</p>

### Defects Relating to Demographics

43. In my review of the 79 30+ Day Defects, 4 (~5%) defects related to demographics. The incidents related to demographics describe conflicting telephone number information, the gender field changing from what was recorded and the failure to see the primary care physician names on the home template that had been entered in the EPM.

44. A detailed listing of 30+ Day Defects pertaining to demographics errors is included in the table below:

Incident #	Incident Description	Incident Resolution
890045	<p>“On the home templates weare [sic] seeing referring physicians but not the PCP's that were entered in EPM.”</p>	<p>“This issue [sic] was fixed in KBM version 7.9 SP2. I tested this in that environment and it is working as expected. So it looks like the easy fix for this is to upgrade your KBM via service pack. The service pack files are available through our client download site. You should be able to apply them yourself as they were designed that way. If you require assistance in applying the service pack, please feel free to call the main support number @P:2156574373 and put in a NEW ticket to have someone show you how to do this in your TEST environment. After confirming this fixes the issue you can then apply the same changes to your PROD environment when feasible.”</p>

1003955	<p>“We upgraded to 5.6.8.13 sp1 ud4 on February 14, 2012. We now are having problems in Citrix and Fat client with the patient demo sheet, letters randomly printing landscape instead of portrait. Some users print fine , others do not. All of our letters are printing landscape rather than portrait. Recall letters, appointment letters etc. We are running windows 7.”</p>	<p>“We were able to manually reset the orientation of the demo sheet and it is now correct. “</p>
1027743	<p>“On 6 known patients the gender field in the patient demographics has been changed to the value of 1 without warning. This prevents the practitioner from being able to document reveiw [sic] of systems. It can be edited and changed back. Why would this field in particular change on its own and with only a handful of patients?”</p>	<p>“This issue has been reviewed and determined to be resolved in KBM 8.0 SP1 and higher. Please contact Support to schedule an upgrade if you are on a version of KBM lower than 8.0 SP1.</p> <p>Thank you for using NextGen Support.”</p>
1250914	<p>“Version 5.6.9.12 KBM 7.9 SP1</p> <p>Patient Demographic template in EHR is listing work phone, this is actually the day phone in EPM. The descriptions are conflicting and do not match. Also patient relation information does not flow to this module from EPM for nursing staff to see or review.</p> <p>Please send me a calendar invite to review this information. With multiple tickets open I want to ensure we have time to communicate. Thank you.”</p>	<p>“Due to client feedback, NextGen Healthcare has implemented a change in handling client-submitted enhancement requests beginning January 1, 2014. All incidents from clients will continue to be reviewed by the Client Support Department for potential existing support and testing against later versions. Once the incident is confirmed as an enhancement to the current version of our product(s), it will be closed and forwarded to Product Management’s software enhancement queue.”</p>

45. Additionally, the Agreement states that NextGen will provide MRH:

Reasonable tools and technology that can assist you in your use of the Software to: (1) comply with applicable HIPAA privacy and security standards; (2) utilize HIPAA transaction and code set standards and (3) comply or use such future HIPAA regulations and standards as soon as practicable after they are promulgated.<sup>15</sup>

46. Notwithstanding this representation, users could easily accidentally log on as a different user when using the Software’s “PIN” log-on option. This could allow an unauthorized user access to PHI that they should not be able to see. I understand from interviewing MRH staff that the hospital believed that the PIN log-on option was not

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<sup>15</sup> See Agreement, § 12(a)(iii).

HIPAA-compliant and that, for this reason (as well as the more obvious security concerns), MRH disabled this feature.<sup>16</sup> Any system in which users can easily log on as a different user is not a secure system.

47. Beyond the security implications of this defect, in a hospital setting this presents a patient safety issue. For example, Incident #1064487 describes how a user could accidentally log in as a different user if the PIN number was entered incorrectly.<sup>17</sup> This incident continues to state that “[t]his is a patient safety [*sic*] and could be a legal issue as we had a provider logged in under a nurse for a day and all of her documents generated under the nurse.”<sup>18</sup>

**B. NEXTGEN FAILED TO MEET ITS CONTRACTUAL OBLIGATIONS TO FIX DEFECTS WITHIN A REASONABLE AMOUNT OF TIME.**

48. The language of the Agreement states that defects will be resolved in a “reasonable amount of time.”<sup>19</sup> The Agreement does not define what amount of time would be deemed “reasonable” for resolving a defect. In a typical software implementation, the amount of time that would be considered “reasonable” to fix a defect depends in part on the impact of that defect on the customer’s business operations. In the example of a hospital, one would reasonably expect that a defect that places patients’ lives at risk should be resolved much more quickly than a defect that poses no risk to patient health. However, NextGen’s Service Desk Express (“SDE”) incident-tracking system did not provide MRH with any systematic way of categorizing the relative impact

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<sup>16</sup> Filename: “NG info.docx” (listing Cori Orahood’s complaints with the NextGen Software).

<sup>17</sup> SDE Data Extract Spreadsheet, sheet 24, row 276.

<sup>18</sup> SDE Data Extract Spreadsheet, sheet 24, row 276.

<sup>19</sup> See Addendum, § 31 (“...Company agrees to correct errors and any interruptions of Software operation caused by the Software. Company further agrees to make reasonable efforts to provide such corrections or ‘bug fixes’ to You in such time and manner as is reasonably requested by You taking into consideration the nature of the errors and interruptions and their impact on your business operations.”).



of defects.

49. Consequently, for purposes of defining a “reasonable” timeframe for resolving defects, I took into account NextGen’s contractual promise to provide MRH with a full refund if NextGen failed to resolve reported defects within 30 days.<sup>20</sup> I infer from this guarantee that NextGen believed it reasonable to resolve defects within a 30-day timeframe. Therefore, for purposes of this analysis, I treated defects that were open for more than 30 days (“30+ Day Defects”) as not having been resolved within a reasonable timeframe.<sup>21</sup>

50. As an example of NextGen’s failure to resolve defects within a reasonable amount of time, an email from Susan Fritz to Robert D. Reynolds from March 13, 2013 includes an attached table of outstanding issues for Mary Rutan Hospital (“MRH”).<sup>22</sup> Five defect items are marked with a “Status” of either “Researching” or “In Future ver.” The five items in question have “Open Dates” from 2012 going back as early as October 14, 2011.<sup>23</sup> These defects were known to NextGen and remained unresolved for between four months and two-and-a-half years.

51. Additionally, on December 6, 2011 MRH submitted Incident #958059 describing

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<sup>20</sup> See Money Back Guarantee, p. 2: “‘The Software will work properly’ means the Software will materially perform in accordance with its User Materials during the Warranty Period and throughout the time You are current in Your payment for Software Maintenance Services. If You notify Company, in writing, of a material failure of the Software to perform in accordance with its User Materials within the first twelve months from the Effective Date and we fail to remedy such failure within 30 days from Your written notification, then upon your written request and return of all Hardware and Software purchased from Company under the Agreement, the Agreement will be deemed terminated and Your refund will be promptly processed.”)

<sup>21</sup> For NextGen to be able to honor its Money Back Guarantee, it would need to have had the ability to resolve defects in less than a 30-day timeframe. While I believe that many important defects should be resolved in a shorter time period, for these analyses I reviewed defects that were open for 30 days or longer, as that was an amount of time that NextGen itself represented that it could meet.

<sup>22</sup> MRH005309.

<sup>23</sup> MRH005313-14, attached Excel spreadsheet titled, “Mary Rutan Hospital development problems for KBM.xlsx”.

lab requisitions printing with an incorrect diagnosis list.<sup>24</sup> Correct documentation is imperative to patient care and safety, yet NextGen did not close this incident until April 21, 2013; 1-1/2 years after the open date.<sup>25</sup>

52. Similarly, Incident #1008386 indicates that the lymphatic physical exam was deleting itself and populating incorrectly on the master documents.<sup>26</sup> Even though NextGen acknowledged its seriousness by creating a follow up note of “\*patient safety!\*”, the incident was kept open for 10 months.<sup>27</sup>

53. On October 29, 2011 MRH submitted Incident #1165516 explaining that the smoking cessation counseling status of a patient with no smoking history is automatically updating.<sup>28</sup> This incident was closed more than one year later, on November 23, 2013.

**i. NEXTGEN FAILED TO RESOLVE MATERIAL SOFTWARE DEFECTS DURING THE WARRANTY PERIOD IN A TIMELY MANNER.**

54. The term, “Material Software Defect,” is not a defined software term, nor is it defined within the scope of the Agreement between MRH and NextGen. Based on my discussions with MRH staff members, MRH reported all defects by means of submitting an incident to NextGen. Thus, for purposes of this report, I have considered all reported incidents pertaining to failures of the Software to perform in accordance with the User Materials as constituting “material” defects.

55. In its Money Back Guarantee, NextGen promised that during the 12 months after the Agreement’s Effective Date (“Warranty Period”), it would remedy material failures

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<sup>24</sup> SDE Data Extract Spreadsheet, sheet 24, row 180.

<sup>25</sup> SDE Data Extract Spreadsheet, sheet 24, row 180.

<sup>26</sup> SDE Data Extract Spreadsheet, sheet 24, row 237.

<sup>27</sup> SDE Data Extract Spreadsheet, sheet 24, row 237; Incident opened on February 23, 2012 and closed on December 20, 2012.

<sup>28</sup> SDE Data Extract Spreadsheet, sheet 24, row 306.

of its Software to perform in accordance with the User Materials within 30 days of receiving written notification from MRH.<sup>29</sup> Based on my review of the problem incidents that were submitted to NextGen's Client Support Center, MRH repeatedly notified NextGen of material failures of the Software during the Warranty Period.<sup>30</sup> However, my review of the Client Support Center reveals that during the Warranty Period, NextGen failed to timely resolve at least 16 problem incidents representing failures of the software to perform as specified in the User Materials.<sup>31</sup>

56. For example, Incident #892654 was submitted on August 24, 2011 because information documented by a physician during an exam was not being saved or printed recording a pregnant patient as not pregnant.<sup>32</sup> Although the MRH indicated "Urgent – EHR," NextGen did not close the incident until one year and eight months later on April 20, 2013.<sup>33</sup>

57. Further, according to Incident #869002, the room number and status of a patient

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<sup>29</sup> See Money Back Guarantee, p. 2: "The Software will work properly' means the Software will materially perform in accordance with its User Materials during the Warranty Period and throughout the time You are current in Your payment for Software Maintenance Services. If You notify Company, in writing, of a material failure of the Software to perform in accordance with its User Materials within the first twelve months from the Effective Date and we fail to remedy such failure within 30 days from Your written notification, then upon your written request and return of all Hardware and Software purchased from Company under the Agreement, the Agreement will be deemed terminated and Your refund will be promptly processed."); *see also* Software License & Services Agreement, §1: "User Materials' means any documentation provided and licensed by Company to You or other organizations using the Software to, among other things, describe (i) the Software functionality, capabilities, procedures, Updates, customizations, screens, data model and fields or (ii) how to train and/or install and/or implement the Software. User Materials may be provided in various forms, including paper, electronic media or in automated format."

<sup>30</sup> See NextGen Client Support Center website (available at: <https://bridge.nextgen.com/?origin=PARTICIPATE&ReturnUrl=https%3A%2F%2Fknowledge.nextgen.com%2Fpe%2F>).

<sup>31</sup> It is my understanding from MRH staff that for more severe issues, notice was given telephonically. It is also my understanding that in these cases, a written record was created in the Service Desk Express incident-tracking software.

<sup>32</sup> SDE Data Extract Spreadsheet, sheet 24, row 137.

<sup>33</sup> SDE Data Extract Spreadsheet, sheet 24, row 137.

was not reflected in the pediatric workflow-appointments area.<sup>34</sup> I understand from discussions with MRH staff that the ability to easily access correct status information regarding a patient is critical to patient care. MRH submitted this incident on July 14, 2011 but it wasn't until December 26, 2012, one year and five months later, that NextGen closed it.<sup>35</sup>

**ii. NEXTGEN FAILED TO RESOLVE 79 DEFECTS WITHIN 30 DAYS.**

58. I reviewed the defect-related materials produced by the parties as well as those materials made available to me through the NextGen to determine whether defects in NextGen's that were reported by MRH were fixed within a reasonable period of time. In particular, I reviewed all support incidents submitted by MRH to evaluate NextGen's incident closure performance. I measured the populations of opened and closed incidents over time, the average age of open incidents over time, and the average number of days NextGen took to close incidents over the course of the project. I then performed a detailed review of all incidents that were open 30 days or more during the course of the project to determine whether the incidents evidenced actual defects rather than requests for enhancements support. A detailed description of my methodology is included as Attachment 2.

59. The release notes for KBM, EHR and EPM, available from NextGen's Support Site, detail the "Problem ID" for defects that have been resolved in a new version of the Software. I cross-referenced these resolved "Problem IDs" with MRH-reported incidents to determine which defects had been resolved in the new versions. I found that, of 81

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<sup>34</sup> SDE Data Extract Spreadsheet, sheet 24, row 119

<sup>35</sup> SDE Data Extract Spreadsheet, sheet 24, row 119

unique Problem IDs assigned to MRH incidents, 72% (58 “Problem IDs”) were not addressed in any of the release notes that I reviewed. This leads me to conclude that I do not have access to a complete set of release notes. Therefore, I will defer further analysis of this matter until I receive a complete set of release notes.

60. I also reviewed the description, developer notes, communications and attachments associated with each incident that was open for at least 30 days to determine the functionality at issue and compared that functionality to the functionality that NextGen represented would be included in the EHR, EPM and KBM modules it sold to MRH. In particular, I relied upon the Agreement and User Materials for the EHR, EPM and KBM modules to determine whether reported defects were material. I also reviewed the representations made by NextGen regarding the availability of bug fixes in service packs it released during the project. In particular, I did not consider material two incidents where NextGen indicated that the underlying issues had been corrected in a service pack release 3 for KBM version 7.9, i.e., KBM version 7.9.3, even though these incidents were open for 30 days or more.<sup>36</sup>

61. Of the 572 incidents in the SDE Data Extract Spreadsheet, I determined that 465 were reported prior to September 23, 2013. Of these 465 incidents, 117 were open for 30 days or more as of September 23, 2013. Of these 117 incidents, I determined that 79 represented material defects in the NextGen Software that were not resolved within 30 days of being reported by MRH. A complete listing of these 79 defects (“30+ Day Defects”) is included as Attachment 3.

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<sup>36</sup>I determined that two incidents did not represent defects because NextGen asserted that the underlying issue had been corrected in versions 7.9.2 – 7.9.6, minor versions that NextGen made available to MRH. Thus, I excluded these incidents in my analysis.

62. In performing the foregoing analysis it is customary practice to distinguish between ticket incidents based upon their assigned priority, but that is not possible at this time.

63. Incident reporting systems usually provide the users reporting defects with the option of indicating the importance of a reported issue for the purpose of prioritizing the work performed to resolve defects. Typically, the assigned priority is a reflection of the number of impacted users, whether critical business functions are impacted, whether a work around is available, or whether the program itself crashes or is unstable.

64. In the case of the support system provided to MRH by NextGen for the EHR, EPM and KBM products, however, no customary prioritization scheme appears to have been used. Although a field entitled “priority ID” appears to have been reported with some, but not all, defects submitted by MRH, this field had only two options by which MRH could request either a one-hour or two-hour response time to the initial support request.<sup>37</sup> Indeed my detailed review of 79 30+ Day Defects has led me to conclude that there is no objective or reliable basis within these incidents from which an independent software expert could determine what priority should have been assigned to these incidents when they were submitted to NextGen. As such, my analysis treats all of the 30+ Day Defects as equally important.

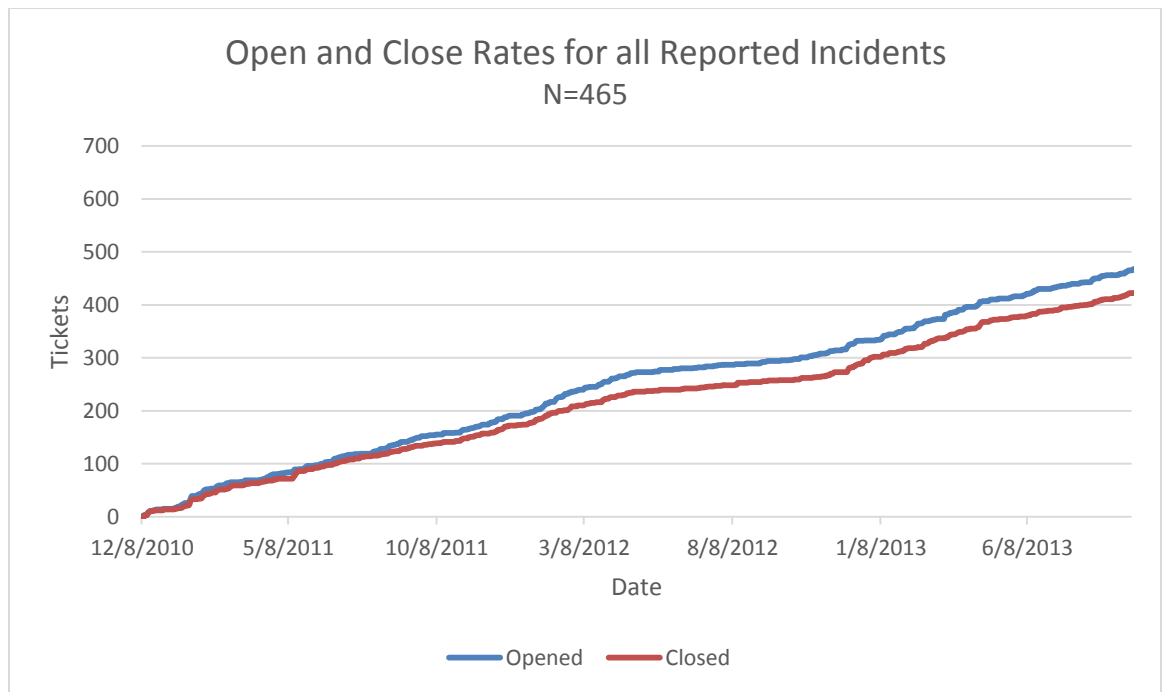
**iii. NEXTGEN BEGAN FALLING BEHIND IN THE RESOLUTION OF REPORTED INCIDENTS EARLY IN THE PROJECT AND CONTINUED TO FALL FURTHER BEHIND AS THE PROJECT PROGRESSED.**

65. NextGen began falling behind in the resolution of reported incidents early in the

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<sup>37</sup> I further understand from speaking with MRH personnel that such requests for a one or two hour response time were rarely honored by NextGen and that MRH utilized NextGen’s “escalation” process to draw NextGen’s attention to particularly urgent or impactful defects by directly contacting the NextGen personnel specified in the escalation instructions.

project and continued to fall further behind as the project progressed. The following graph shows the population of opened and closed incidents during the Agreement period from December 9, 2010 through September 23, 2013. Opening and closing data for all incidents submitted by MRH during this period are shown. The data shows that incidents were opened at a greater rate than they were closed beginning in January 2011, which is not unusual early in a project. However, this trend continued and accelerated through mid-December 2012, after which the number of active incidents remained relatively stable. Thus, incidents continued to be opened at about the same rate they were being closed, when as the project progressed, the number of open incidents should have begun to decline.



**iv. THE NUMBER OF ACTIVE INCIDENTS ROSE THROUGHOUT THE WARRANTY PERIOD AND CONTINUED TO RISE AFTER THE NEXTGEN SOFTWARE WENT LIVE.**

66. The number of active incidents rose throughout the Warranty Period and continued to rise thereafter. The following graph shows the population of active incidents

during the Warranty Period. The data shows that the number of active incidents increased significantly between January 2011 and December 2012 and then remained relatively stable for the duration of the Agreement period.

<b>OPENING AND CLOSING OF INCIDENTS DURING THE WARRANTY PERIOD AND THE PROJECT AS A WHOLE (N=465)</b>			
<b>DATE</b>	<b>Total incidents opened</b>	<b>Total incidents closed</b>	<b>Active incidents</b>
<b>9/28/2011</b>	153	136	17
<b>9/23/2013</b>	465	422	43

67. As I explain in detail elsewhere in this report, while 422 incidents were “closed,” this does not necessarily mean that NextGen resolved the issues underlying these incidents. For example, NextGen closed incidents on the basis of its recommendation to upgrade the Software.

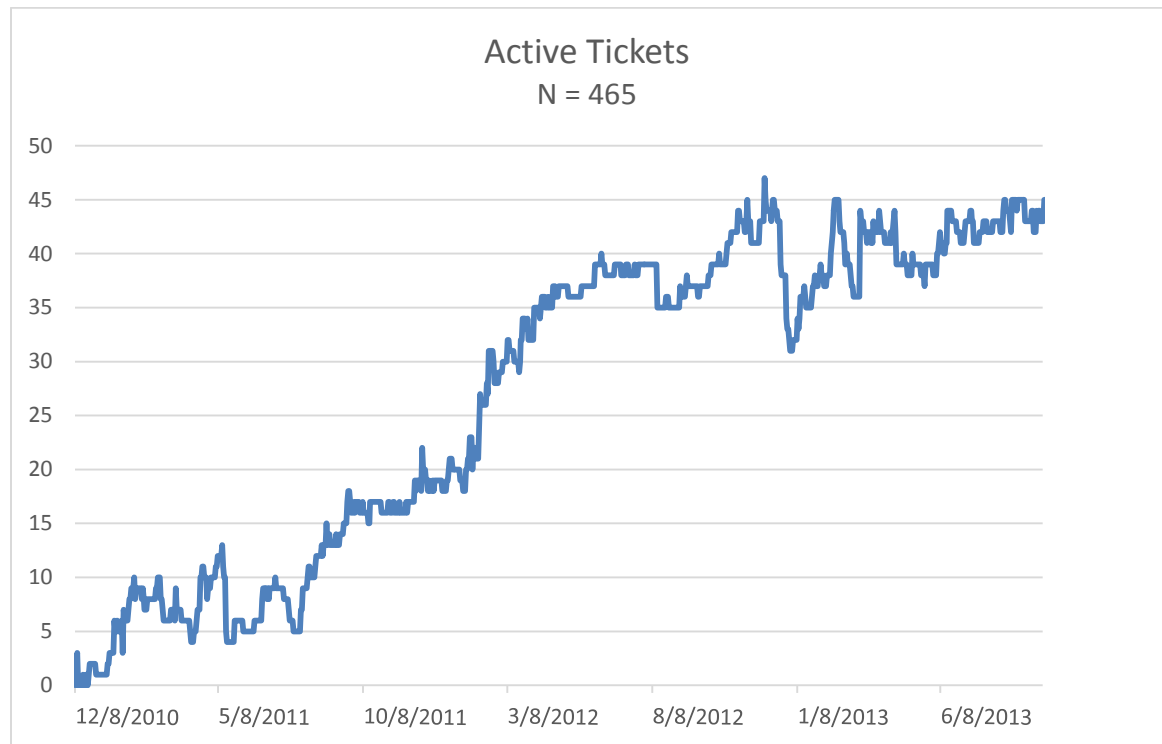
68. In particular, the data shows that there were 17 active incidents on September 28, 2011, the end of the Warranty Period, which was the highest number of active incidents during the project to that date. Moreover, there were 43 active incidents on September 23, 2013, only four fewer than the maximum number of open incidents at any point during the project.<sup>38</sup> These counts are conservative, however, since many “closed” incidents were not actually resolved by NextGen in the versions of the Software purchased by MRH. Thus, the data further confirms that NextGen began falling behind in the resolution of reported incidents during the Warranty Period and continued to fall farther behind as the project progressed. After December 2012, the number of active

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<sup>38</sup> 47 incidents were open on December 4, 2012.



incidents fluctuated between 31 and 45.<sup>39</sup> However, at no point did NextGen make significant or continuous progress towards resolving approximately two-thirds of these unresolved incidents.



**v. THE AVERAGE AGE OF ACTIVE INCIDENTS INCREASED DURING BOTH THE WARRANTY PERIOD AND OVER THE COURSE OF THE ENTIRE PROJECT.**

69. The average age of active incidents increased during both the Warranty Period and over the entire project. In particular, as the graph below illustrates, the average age of active incidents increased to 60 days as of September 28, 2011, i.e., the end of the Warranty Period. The table below summarizes the average age of active incidents as of two critical dates in the project. First, the 17 incidents active on September 28, 2011 were

<sup>39</sup> These counts exclude incidents that were closed by NextGen on the suggestion to upgrade. While, as discussed below, I do not consider the suggestion to upgrade the software to constitute support of the NextGen Software, for the purpose of determining the number of “active” defects I have not counted incidents that were closed by NextGen on the basis of such a suggestion.

open for an average of 60 days. The 43 incidents active on September 23, 2013 had been open for an average of one year.

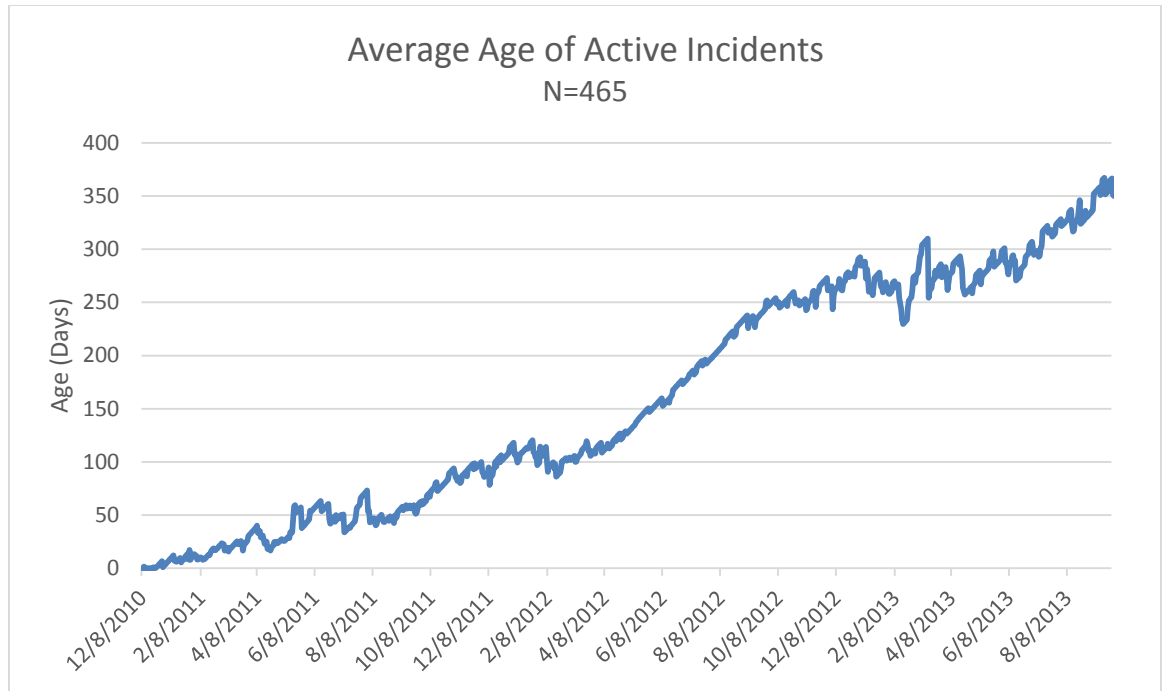
<b>AVERAGE AGE OF ACTIVE INCIDENTS (N=465)</b>		
<b>DATE</b>	<b>Active Incidents</b>	<b>Average age of active incidents (days)</b>
<b>9/28/2011</b>	17	60
<b>9/23/2013</b>	43	366

70. In a typical software implementation, the average age of open incidents would be expected to temporarily increase early in the project as users begin encountering problems during day-to-day operations. Later in the project, however, one would expect the average age of open incidents to decrease as reported incidents are effectively resolved.<sup>40</sup>

71. By contrast, not only did the average age of open MRH-reported incidents steadily increase over the project, but the average age increased at an accelerated rate. Following the end of the Warranty Period, the average age of active incidents increased at an accelerated rate for the remainder of the project, particularly between February 2012 and October 2012, as the graph below illustrates.

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<sup>40</sup> See generally, TechNet Library, Chapter 10: Stabilizing Phase (available at: <https://technet.microsoft.com/en-us/library/bb497028.aspx>).



72. This dramatic increase in the average age of open incidents is due, in part, to NextGen’s failure to timely resolve defects reported after the Warranty Period had expired despite the fact that MRH had paid for ongoing maintenance and support. By September 23, 2013, 19 incidents had remained open for over one year. I determined that 11 of these 19 incidents related to Software defects.<sup>41</sup> Thus, over a quarter of the incidents (11 out of 43) that were active as of September 23, 2013 were Software defects that NextGen had failed to resolve for more than one year.

<sup>41</sup> Of the 11 Software defects that were open for more than one year at the end of the project, Incident #789547 is unique in that it was open for over two-and-a-half years and it was open for nearly six months at the end of Warranty Period on September 28, 2011. Incident #789547 relates to a data type conversion error that MRH users of the NextGen Software received when trying to edit “Weekly Templates” within “Scheduling Administration.” See NextGen EPM User Guide, Version 5.6 SP1, at 113-117. Incident #789547 was opened on February 24, 2011 and never closed.

These 11 incidents are identified in the following table.

<b>Incidents Open for More Than One Year as of 9/23/2013</b>	
<b>Incident Number</b>	<b>Date Opened</b>
<b>789547</b>	2/24/2011
<b>915476</b>	9/29/2011
<b>925466</b>	10/14/2011
<b>959508</b>	12/8/2011
<b>978337</b>	1/10/2012
<b>996740</b>	2/6/2012
<b>996998</b>	2/7/2012
<b>1023937</b>	3/20/2012
<b>1027037</b>	3/23/2012
<b>1034040</b>	4/4/2012
<b>1064487</b>	5/24/2012

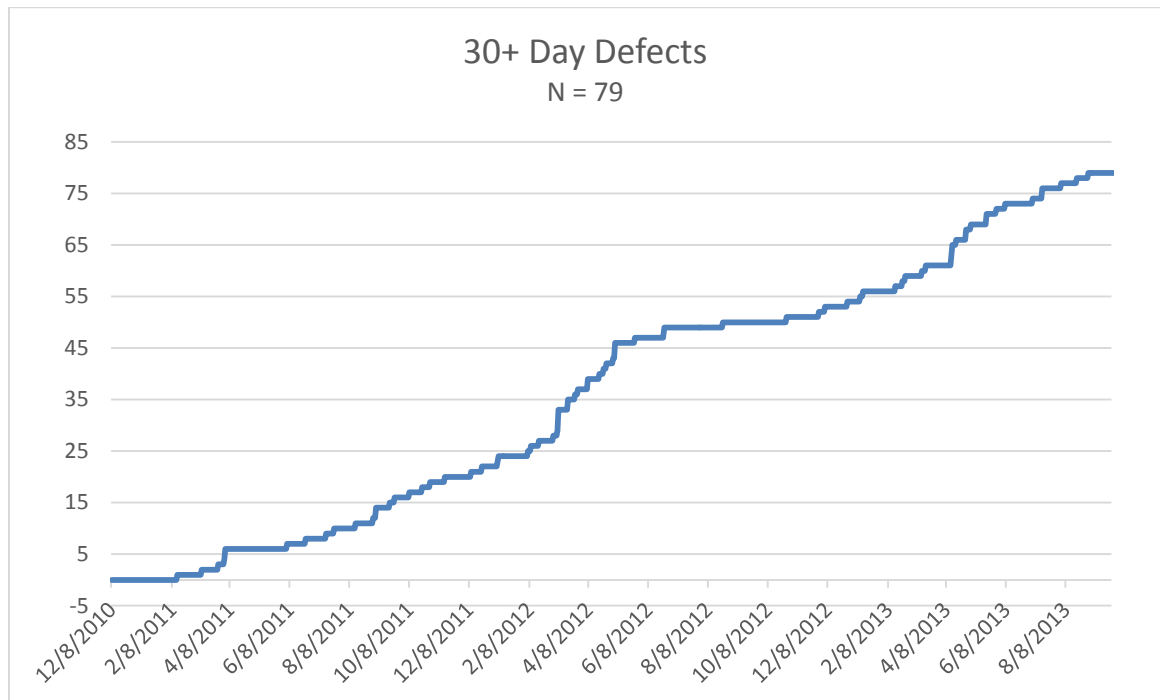
- vi. 79 DEFECTS REMAINED OPEN FOR MORE THAN 30 DAYS DURING THE PROJECT, AND 16 DEFECTS REMAINED OPEN FOR 30 DAYS DURING THE WARRANTY PERIOD.**

73. Of the 572 incidents reported by MRH, I determined that 465 were reported prior to September 23, 2013. Of these 465 incidents, 117 were open for 30 days or more as of September 23, 2013. I determined that 79 of the 117 incidents that were active for more than 30 days represented defects. As noted above, I refer to these Incidents as the “30+ Day Defects.” A detailed description of my methodology for identifying the 30+ Day Defects is included as Attachment 2. The table below shows the number of 30+ Day Defects as of September 28, 2011, the end of the Warranty Period, and September 23, 2013, the date on which MRH filed suit against NextGen.

<b>30+ DAY DEFECTS AS OF THE END OF THE WARRANTY PERIOD AND AS OF THE DATE MRH FILED SUIT</b>					
<b>DATE</b>	<b>Resolved</b>	<b>% Resolved</b>	<b>Unresolved</b>	<b>% Unresolved</b>	<b>Total 30+ Day Defects</b>
<b>9/28/2011</b>	7	44%	9	56%	16
<b>9/23/2013</b>	51	65%	28	35%	79

74. The graph below illustrates the population of 30+ Day Defects between

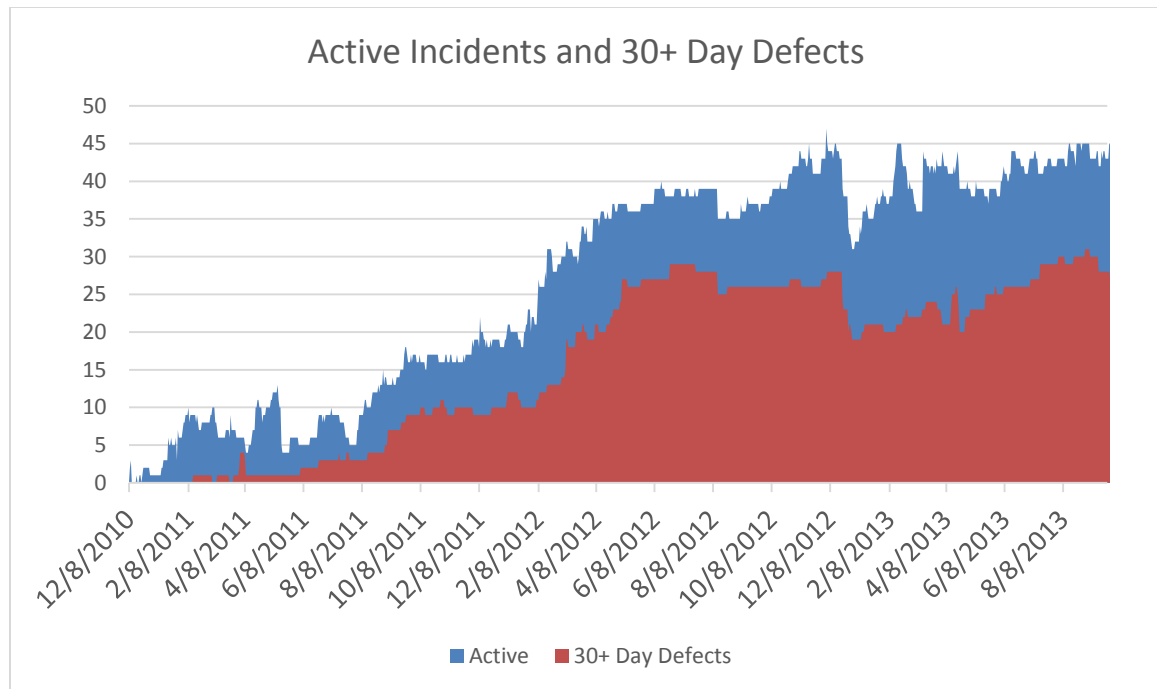
December 9, 2010 and September 23, 2013. The data shows that the number of these defects increased at a nearly constant rate of approximately one defect every two weeks.



75. Moreover, the data shows that of the 17 active incidents that were active on September 28, 2011, nine were 30+ Day Defects. Furthermore, of the 43 incidents that were active on September 23, 2013, 28 were 30+ Day Defects.

Active Incidents and 30+ Day Defects on Critical Dates		
DATE	Active Incidents on Date	30+ Day Defects
9/28/2011	17	9
9/23/2013	43	28

76. Indeed, as the graph below illustrates, 30+ Day Defects comprised a significant portion of active incidents at all times during the project. For the period beginning on or about September 2011 through September 2013, moreover, both the number of active incidents and the number of 30+ Day Defects increased, and for most of this period the majority of active incidents were 30+ Day Defects.



**vii. NEXTGEN WAS AWARE THAT 43 OF THE 30+ DAY DEFECTS WERE CAUSED BY DEFECTS IN KBM TEMPLATES THAT IT SOLD TO MRH, BUT NEXTGEN DID NOT RESOLVE THESE DEFECTS IN A TIMELY MANNER.**

77. Of the 79 30+ Day Defects reported by MRH, 43 defects (~54%) were related to KBM templates. NextGen produced data related to these “Defects,” and the “Problems” with which these Incidents were associated, in a database extract contained within the SDE Data Extract Spreadsheet rather than as a native database. I understand that the data related to “Defects” and “Problems” produced by NextGen originates from its internal defect tracking and resolution system, rather than from the Support Site that MRH reported incidents through.

78. As noted previously, MRH did not assign priorities or severities to the Incidents it submitted; however, for those Incidents submitted by MRH that NextGen linked to “Problems” and, by extension, “Defects” that it tracked internally, NextGen assigned severity and priority levels, in some, but not all cases. These severity and priority levels

are indicated in the SDE Data Extract Spreadsheet on Sheet 29. NextGen did not link every Incident to a “Problem” or “Defect,” however. Moreover, while the SDE Data Extract identifies the “problems” with which some Incidents and “defects” are associated, it does not appear to include all of the defects associated with each problem.<sup>42</sup> Thus, given what NextGen has produced, it is not possible to determine the absolute earliest date when defects in particular templates were identified as the cause of problems reported by MRH, only the first date on which a defect pertaining to such a problem was created where that defect was subsequently included in NextGen’s production.

79. Nonetheless, I reviewed the data extract produced by NextGen, interviewed fact witnesses and reviewed the User Materials, and have determined that several of these template-related defects were not addressed within a reasonable period of time after being reported by MRH. Moreover, in the case of several problems reported by MRH in KBM Version 7.9.1, the same defects were detected in KBM Versions 8.0, 8.1 and 8.3. Furthermore, fixes were not released for several defects until KBM Version 8.3.

DATE	TOTAL 30+ DAY DEFECTS	30+ DAY DEFECTS RELATED TO TEMPLATES
9/28/2011	16	8
9/23/2013	79	43

80. For example, Incident #90966, relating to an issue with saving subjective patient information using the “sinusitis\_quick\_visit\_subj” template, was reported by MRH on September 21, 2011. Documents produced by NextGen show that this issue was identified as a defect on December 9, 2010 and assigned a Severity of “3-Critical” and a priority of “5-Urgent.” Despite having identified the defect in the 7.9 release of KBM that

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<sup>42</sup> Several Problems have a “Date Opened” that predates the earliest produced defect record associated with the Problem.

it sold to MRH, NextGen did not begin fixing this problem until March 16, 2011 **and** planned to release a fix to the problem in KBM Version 8.0.<sup>43</sup> Moreover, NextGen did not resolve this problem until December 26, 2012, over a year after MRH first reported having this problem with the “sinusitis\_quick\_visit\_subj” template, and more than two years after NextGen determined that the problem was caused by a defect in this template.

81. Similarly, Incident #1033941, relating saving a second reason for a visit using saving a second reason for a visit using the “hpi\_peds\_behavioral\_prob” template, was reported by MRH on April 4, 2012. Documents produced by NextGen show that this issue was identified as a defect on February 25, 2011 and assigned a severity of “3-Critical” and a priority of “3-High.” Despite having identified the defect in the 7.9 release, NextGen did not plan to release a fix until the KBM 8.0 SP1 release. Moreover, NextGen did not resolve this problem in KBM Version 7.9 until March 4, 2013, with the release of KBM Version 7.9 SP3, over 15 months after MRH first reported this problem with the “hpi\_peds\_behavioral\_prob” template having this issue with and over two years after NextGen determined that the problem was caused by a defect in this template.

82. Incident #1033944, relating to the concatenation of comments entered through the “HPI\_vag\_itc” template, was reported by MRH on April 4, 2012. Documents produced by NextGen show that this issue was identified as a defect on August 11, 2010 and assigned a severity of “1-Minor” and a priority of “1-Low.” Despite having identified this defect in the KBM version 7.9 sold to MRH, NextGen did not begin work on fixing this problem until March 27, 2011, and did not plan to fix this problem until the version 8 release. In fact, NextGen did not resolve this problem until December 26, 2012 with the

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<sup>43</sup> The earliest record of a “Defect” associated with this issue that NextGen has produced is dated March 16, 2011.



KBM 8.1 release, more than eight months after MRH reported this problem with the “HPI\_vag\_itch” template and over two years after NextGen had determined that the problem was caused by a defect in this template.

83. Incident #1016341, relating to billing problems with the “pe\_gyn\_exam” template, was reported by MRH on March 7, 2012. Documents produced by NextGen show that this issue was identified as a defect on April 12, 2011 and assigned a severity of “3-Critical” and a priority of “3-High.” Despite having identified the defect in the KBM 7.9 release sold to MRH, NextGen did not plan to release a fix until KBM Version 8. In fact, NextGen did not begin work on fixing this problem until April 13, 2012 and released a fix in KBM version 8.1 on April 31, 2013, over one year after MRH first reported this problem with the “pe\_gyn\_exam” template and over three years after NextGen determined that the problem was caused by a defect in the template.<sup>44</sup>

84. Incident #1347995, relating to billing medications through the “Proc\_join\_injections” template, was reported by MRH on August 1, 2013. Documents produced by NextGen show that this issue was identified as a defect on February 13, 2012 and assigned a severity of “3-Critical” and a priority of “3-High.” Despite the fact that MRH identified this defect in KBM Version 7.9, NextGen’s records indicate that this defect was not identified as a problem until KBM Version 8.0, and the same defect was also reported in KBM Version 8.1. Indeed, NextGen documents show that a fix for this defect was planned in the KBM 8.0 and 8.1 releases although the problem was not fixed until November 23, 2013 and that a fix was not released until KBM Version 8.3, over three months after MRH reported having this problem with the “Proc\_join\_injections”

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<sup>44</sup> The earliest record of a “Defect” associated with this issue that NextGen has produced is dated April 13, 2012.

template, and over 18 months after NextGen became aware that the problem was caused by a defect in the template.<sup>45</sup>

85. Incident #1034040, relating an issue with fields being carried forward from previous unrelated injuries into the “hpi\_injury” template, was reported by MRH on April 4, 2012. Documents produced by NextGen show that this issue was not identified as a defect until December 13, 2012, over eight months after it was reported by MRH. NextGen assigned this defect a severity of “2-Major” and a priority of “4-Very High.” Despite the fact that MRH reported this defect in KBM Version 7.9.1, NextGen records suggest that it did not begin to address the problem until KBM Version 8.1, and that this defect was also present during the development of Version 8.3. A fix for this problem was not released until November 23, 2013 with the release of KBM Version 8.3. As such, the documents indicate that NextGen did not offer a fix for this defect in KBM version 7.9, and that no fix whatsoever was made available for over 19 months after

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<sup>45</sup> Incident #1347995 is associated with Problem #31693, opened on September 6, 2011. Metadata for Problem #31693 indicates that many NextGen clients other than MRH were impacted by this issue. For example, the following client contact addresses are associated with Problem #31693 in addition to MRH’s contact, Cori Orahoad:

nadams@majorhospital.org;  
 rwhirledge@iuhealth.org;  
 tnelson@highlandclinic.com;  
 rwhirledge@iuhealth.org;  
 yvine1@cmhlink.org;  
 morgovsky@virtua.org;  
 ndeyo@plattevalleymed.com;  
 sstewart@carolinaorthopedics.com;  
 petersonw@andersonhospital.org;  
 klandman@centegra.com;  
 smeissner@nwhumanservices.org;  
 kerrikoller@macombmd.com; and  
 yvine1@cmhlink.org.  
 gnissen@butlerdoctor.com

As such, the data suggests that NextGen was aware of the issue reported in Incident #1347995 almost two years before it was reported by MRH. However, NextGen failed to address this problem for over two years.

MRH first reported this problem with the “hpi\_injury” template. Moreover, NextGen did not address this defect for nearly a year after it became aware that the problem was caused by a defect in the “hpi\_injury” template.<sup>46</sup>

86. Incident #1165516, relating to the “social\_hx” template, was reported by MRH on October 29, 2012. Documents produced by NextGen show that this issue was identified as a defect on January 25, 2013, although NextGen may have been aware of the issue as early as October 21, 2011.<sup>47</sup> NextGen assigned this defect a severity of “2-Major” and a priority of “2-Medium.” Despite the fact that MRH reported this defect in 7.9.1, NextGen records suggest that it did not begin to address the problem until 8.1, that this defect was also present during the development of 8.3, and that a fix for this problem was not released until November 23, 2013 with the release of KBM 7.9. As such, the documents indicate that NextGen did not offer a fix for this defect in KBM 7.9, and that no fix whatsoever was made available for over 19 months after MRH first reported this problem with the “social\_hx” template. Moreover, NextGen did not address this defect for nearly one year after it became aware that the problem was caused by a defect in the

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<sup>46</sup> Incident #1034040 is associated with Problem #35228, opened January 1, 2012. Metadata for Problem #35228 indicates that another NextGen client contact was associated with this Problem, bradtke@metropediatrics.com, which suggests that this problem may have been reported by another NextGen client approximately three months before MRH reported the same issue and over 11 months before NextGen’s records indicate that it determined this Problem was caused by a defect in the “hpi\_injury” template.

<sup>47</sup> Incident #1165516 is associated with Problem #3269, opened on December 21, 2011. Metadata for Problem #3269 indicates that many NextGen clients other than MRH were impacted by this defect. For example, the following client contact addresses are associated with Problem #31693 in addition to MRH’s contact, Cori Orahoad:

sfiles@mvipa.org;  
 ssheneman@aicdheart.com;  
 dknisely@SHC.org;  
 danab@gbscorp.com;  
 pmokkapati@secureehr.com;  
 scheduling@ei-brainspinesurgery.com; and  
 kevin.colombo@sinai.org.

“social\_hx” template.

**viii. NEXTGEN FAILED TO ASSIGN AN ACCURATE OR MEANINGFUL “DUE DATE AND TIME” TO EACH REPORTED INCIDENT.**

87. Proper defect resolution procedures require establishing a timeframe within which each reported defect should be resolved.<sup>48</sup> My review of both the SDE Data Extract Spreadsheet and the Support Site incident data reveals that NextGen’s incident-tracking software provides a field, titled “Due Date and Time,” for this very purpose. However, my analysis of the data entered into this “Due Date and Time” field demonstrates that NextGen failed to assign an accurate or meaningful “Due Date and Time” to each reported incident.

88. For example, 14 Incidents from the SDE spreadsheet have due dates before the incident was even created. Incident # 1169200 is opened on 11/5/2012, but has an assigned “Due Date and Time” two and a half years earlier, 4/13/2010. Incident # 1032303 is opened on 4/2/2012, but has a “Due Date and Time” a year and a half earlier of 11/3/2010. Incident # 1347995 was opened on 11/23/13 and assigned a “Due Date and Time” almost 3 years earlier of 2/3/2011. A table detailing these 14 Incidents is included below.

Incident #	Open Date & Time	Due Date & Time:	Days Before Incident Opened
1193322	12/13/12 4:03 PM	12/13/12 1:23 PM	0.11
1229300	2/11/13 2:04 PM	1/25/13 11:30 AM	17.11
840326	5/25/11 10:58 AM	2/18/11 2:30 PM	95.85
1027743	3/26/12 2:40 PM	4/18/11 12:47 PM	343.08
1033944	4/4/12 2:10 PM	3/4/11 7:32 PM	396.78
996740	2/6/12 5:03 PM	1/3/11 1:25 PM	399.15
1132559	9/11/12 12:19 PM	8/4/11 4:40 PM	403.82
1165516	10/29/12 3:09 PM	8/19/11 3:19 PM	436.99

<sup>48</sup> ITIL Incident Management, (available at [http://itlibrary.org/index.php?page=Incident\\_Management](http://itlibrary.org/index.php?page=Incident_Management)).

Incident #	Open Date & Time	Due Date & Time:	Days Before Incident Opened
1032303	4/2/12 3:08 PM	11/3/10 3:28 PM	515.99
1210703	1/15/13 12:45 PM	6/2/11 6:45 PM	592.75
925466	10/14/11 8:50 AM	1/6/10 9:18 AM	645.98
1282301	4/29/13 11:44 AM	1/19/11 3:46 PM	830.83
1347995	8/1/13 9:00 AM	2/3/11 4:15 PM	909.70
1169200	11/5/12 11:29 AM	4/13/10 8:47 AM	937.11

89. Additionally, 15 Incidents have due dates more than one year in the future.

Incident #954298 has a “Due Date and Time” *85 years* in the future, 4/5/2096. The “Due Date and Time” for Incident #1100546 is 65 years in the future, and for Incident # 909666 the “Due Date and Time” is 55 years ahead. A table detailing the 15 Incidents with a “Due Date and Time” more than one year in the future is included below.

Incident #	Open Date & Time	Due Date & Time:	Days After Incident Opened
959508	December 8, 2011	May 1, 2014	875.16
1034040	April 4, 2012	July 15, 2015	1196.62
1362004	August 21, 2013	May 18, 2020	2461.68
996684	February 6, 2012	February 16, 2019	2567.22
1009402	February 27, 2012	June 5, 2019	2655.08
892654	August 24, 2011	July 14, 2022	3977.54
881090	August 4, 2011	April 3, 2024	4626.27
1386117	September 25, 2013	November 20, 2035	8091.14
1008386	February 23, 2012	October 8, 2034	8262.85
1033941	April 4, 2012	January 10, 2038	9411.71
869002	July 14, 2011	May 31, 2049	13836.16
1218510	January 25, 2013	June 6, 2061	17663.76
909666	September 21, 2011	March 28, 2066	19911.61
1100546	July 23, 2012	December 10, 2077	23880.43
954298	November 30, 2011	April 5, 2096	30807.73

90. 22 Incidents do not track a “Due Date & Time” at all. The SDE Data Extract Spreadsheet displays a value as “NULL” if no data has been recorded. The Incidents without an assigned “Due Date & Time” are detailed below.

Incident #	Open Date & Time	Due Date & Time:
1251038	March 14, 2013	NULL
796131	March 8, 2011	NULL
841215	May 26, 2011	NULL
862560	July 5, 2011	NULL
896894	August 31, 2011	NULL
964386	December 15, 2011	NULL
965709	December 16, 2011	NULL
983842	January 17, 2012	NULL
983851	January 17, 2012	NULL
1007739	February 23, 2012	NULL
1016818	March 7, 2012	NULL
1027298	March 26, 2012	NULL
1033445	April 3, 2012	NULL
1044031	April 23, 2012	NULL
1088197	July 2, 2012	NULL
1261141	March 28, 2013	NULL
1179086	November 20, 2012	NULL
1187981	December 5, 2012	NULL
1261175	March 28, 2013	NULL
1334696	July 12, 2013	NULL
1356668	August 13, 2013	NULL
1408847	October 24, 2013	NULL

91. Additionally, even in those instances in which it appears that NextGen did assign a meaningful “Due Date and Time” to reported defects, NextGen failed to resolve those defects by the assigned due date and time. I have determined that NextGen closed 135 incidents after their assigned due date and time, which constitutes approximately 30% of the incidents bearing a due date and time. Thus, this analysis leads me to conclude that NextGen failed to assign an accurate or meaningful “Due Date and Time,” and that NextGen did not effectively manage incident resolution due dates.

**C. NEXTGEN FAILED TO ADEQUATELY SUPPORT KBM VERSION 7.9.**

92. The Agreement between MRH and NextGen provides that NextGen will support

both the current “general-released” version, and the two prior “general-released” versions.<sup>49</sup>

93. The term “general-released version” is not defined in the Agreement. However, NextGen does provide the following explanation of the meaning of “general release” on its Support Site:

NextGen Healthcare will provide Software Maintenance services on the most current general release of our NextGen® software for the Ambulatory market and the two-general release versions immediately prior to it.<sup>50</sup>

94. NextGen further clarifies that:

Accordingly, effective October 1, 2013, we will provide Software Maintenance services solely on the following NextGen® software for the Ambulatory market:

NextGen®Ambulatory EHR versions: 5.8.xx, 5.7.xx and 5.6.1.xx

NextGen®Ambulatory Knowledge Base Model versions: 8.3.xx, 8.1.xx and 8.0.xx<sup>51</sup>

95. The current NextGen software life cycle available on NextGen’s Support Site contains a very similar policy. NextGen’s updated support policy, effective October 1, 2013, states that:

With each major release of NextGen® software for the Ambulatory market, and our NextGen KBM software, our supported versions will move forward one version to reflect the policy of supporting our current version plus our two most immediate previous

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<sup>49</sup> See Agreement, § 12(a), Exclusions(e): “Maintenance Services on anything but the most current ‘general-released’ version of the Software and the two general-released versions immediately prior to same.” (quotations added).

<sup>50</sup> NextGen Client Support Center, (available at: [https://knowledge.nextgen.com/pe/action/changedeviceview?deviceType=full&portalPageId=10144656&channelID=10144856&contentTag=QL\\_SupportLifecycle](https://knowledge.nextgen.com/pe/action/changedeviceview?deviceType=full&portalPageId=10144656&channelID=10144856&contentTag=QL_SupportLifecycle)).

<sup>51</sup> NextGen Client Support Center, (available at: [https://knowledge.nextgen.com/pe/action/changedeviceview?deviceType=full&portalPageId=10144656&channelID=10144856&contentTag=QL\\_SupportLifecycle](https://knowledge.nextgen.com/pe/action/changedeviceview?deviceType=full&portalPageId=10144656&channelID=10144856&contentTag=QL_SupportLifecycle)).

versions.<sup>52</sup>

96. The “major releases” of the NextGen products are defined by the NextGen Client Support Center Website as well:

The company recognizes the first numeric value before and after each release as a major release:  
Therefore, versions 5.5, 5.6 and 6.0 would each be a major release  
However moving from 5.5.28 to 5.5.40 would not be a move from one major release to the next.<sup>53</sup>

97. It appears that NextGen uses the terms “major release” and “general release” interchangeably. Accordingly, prior to the release of KBM 8.3, NextGen should have been supporting software for the current version of KBM 8.1, and the two previous versions, namely 8.0 and 7.9.

98. An “upgrade” is not identical to an “update.”<sup>54</sup> The Agreement defines an “update” as:

[A]ny improvement (i.e. enhancement) and/or changes to the Software offered by Company. Updates do not include additional modules and/or capabilities for which Company charges a separate license fee to its customers.<sup>55</sup>

99. Furthermore, the Agreement specifies that:

Provided You are current in Your payments required under any agreement with Company and otherwise in compliance with this and all other agreements with Company, then Company shall provide You with its Software Maintenance Services, which include:  
(i) At no additional charge, all Updates to the Software, which shall include keeping the Software in compliance with federal and

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<sup>52</sup> NextGen Client Support Center, (available at: [https://knowledge.nextgen.com/pe/action/changedeviceview?deviceType=full&portalPageId=10144656&channelID=10144856&contentTag=QL\\_SupportLifecycle](https://knowledge.nextgen.com/pe/action/changedeviceview?deviceType=full&portalPageId=10144656&channelID=10144856&contentTag=QL_SupportLifecycle)).

<sup>53</sup> NextGen Client Support Center, (available at: [https://knowledge.nextgen.com/pe/action/changedeviceview?deviceType=full&portalPageId=10144656&channelID=10144856&contentTag=QL\\_SupportLifecycle](https://knowledge.nextgen.com/pe/action/changedeviceview?deviceType=full&portalPageId=10144656&channelID=10144856&contentTag=QL_SupportLifecycle)).

<sup>54</sup> See Apple Support Website: “Software update, upgrade—what’s the difference?” (available at: <http://support.apple.com/en-us/HT201564>).

<sup>55</sup> See Agreement, § 1.



state regulated changed that are identified, in writing, by You or of which Company has become aware.<sup>56</sup>

100. NextGen's Support Site implies that an "upgrade" refers to a "major release" by stating:

If you later decide to upgrade, and are upgrading more than one major version, support for upgrading your product will require an hourly fee-based project.<sup>57</sup>

101. According to Robert Reynolds, MRH's IT Director, around the summer of 2012 NextGen ceased supporting KBM Version 7.9, and responded to submitted incidents by recommending "upgrades."<sup>58</sup> The current release of KBM during that time would have been 8.1, according to the dates for the release notes of KBM 8.1 and 8.3, respectively. Accordingly, NextGen should have been supporting the current version of KBM Version 8.1, and the two previous versions, namely 8.0 and 7.9.

102. Additionally, Mr. Reynolds estimated that the time cost for an upgrade would be between three and six months, with additional time and money costs associated with hiring extra help to perform the upgrade.<sup>59</sup> In my opinion, an upgrade should not be the only support option for a software system, due to the potentially large associated costs in time as well as money involved in performing that upgrade, especially when the version in use (in this case, KBM Version 7.9) is under a support agreement.

103. Based on my review of the SDE Data Extract Spreadsheet, I have determined that of the 572 MRH-reported incidents, NextGen improperly closed 31 incidents (~5%) on the suggestion that MRH upgrade the Software.

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<sup>56</sup> See Agreement, § 12(a)(i).

<sup>57</sup> See NextGen Support Site, (available at: [https://knowledge.nextgen.com/pe/action/changedeviceview?deviceType=full&portalPageId=10144656&channelID=10144856&contentTag=QL\\_SupportLifecycle](https://knowledge.nextgen.com/pe/action/changedeviceview?deviceType=full&portalPageId=10144656&channelID=10144856&contentTag=QL_SupportLifecycle)).

<sup>58</sup> October 28, 2014, Deposition of Dennis Reynolds, 87:5-88:5.

<sup>59</sup> December 3, 2014 meeting with Dennis Reynolds.

104. Below are examples of incidents submitted by MRH which NextGen improperly closed on the suggestion that MRH upgrade the Software.

105. Incident #1251038 indicates that the anticoagulation module does not correctly populate the history grids and the dosing does not flow.<sup>60</sup> NextGen's response states that "[t]his issue is fixed in KBM 7.9 and higher."<sup>61</sup> However, MRH was already using KBM version 7.9.1 at the time this incident was submitted; rendering NextGen's response inappropriate.

106. According to Incident #869002, the pediatric workflow-appointments area does not reflect the room or status of the patient.<sup>62</sup> NextGen responded to this incident by stating the issue is resolved in KBM 8.0 SP1 and higher and suggested MRH schedule an upgrade.<sup>63</sup>

107. In addition, on August 24, 2011 Incident #892654 was submitted indicating that "Urgent – EHR When the physician's [*sic*] are documenting a OBGYN exam not all the items that were choosen [*sic*] are saved or printed."<sup>64</sup> NextGen responded by stating "[t]his issue has been reviewed and determined to be resolved in KBM 8.1 and higher. Please contact Support to schedule an updrage [*sic*] if you are on a version of KBM lower than 8.1."<sup>65</sup>

108. On December 6, 2011, MRH submitted Incident # 958059 because the lab requisitions were being printed with the incorrect diagnosis list.<sup>66</sup> NextGen notified MRH that the issue is resolved in KBM 8l.1 and higher, suggested MRH schedule an upgrade

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<sup>60</sup> SDE Data Extract Spreadsheet; sheet 24, row 379.

<sup>61</sup> SDE Data Extract Spreadsheet; sheet 24, row 379.

<sup>62</sup> SDE Data Extract Spreadsheet, sheet 24, row 119.

<sup>63</sup> SDE Data Extract Spreadsheet, sheet 24, row 119.

<sup>64</sup> SDE Data Extract Spreadsheet, sheet 24, row 137.

<sup>65</sup> SDE Data Extract Spreadsheet, sheet 24, row 137.

<sup>66</sup> SDE Data Extract Spreadsheet, sheet 24, row 180

and closed the incident on April 21, 2013.<sup>67</sup>

109. MRH submitted Incident #1210703 indicating that for some OB/GYN patients the “currently pregnant” radio button automatically unpopulates after the patient has been seen by the doctor several times.<sup>68</sup> NextGen stated this issue is resolved in KBM 8.0.4 and 8.1 and higher, suggested MRH schedule an upgrade and closed the incident on April 20, 2013.<sup>69</sup>

110. On December 8, 2011, Incident # 959508 was opened by MRH because “in urology template sets the catheterization/intravesical treatment procedure template is generating incorrect coding for two procedures.”<sup>70</sup> More than two years later, NextGen closed the incident on March 14, 2014 with a resolution that “[t]his issue was reviewed and resolved in KBM 8.3.3. Please upgrade to the latest KBM versio [*sic*] to reveived [*sic*] the fix for this issue.”<sup>71</sup>

111. Incident #1289469, submitted on May 8, 2013, refers to an “end of the day rx report not pulling two e-prescribed medications onto the report at all.”<sup>72</sup> On May 13, 2014 NextGen stated that “the issue has been resolved in the current general release 5.8 UD1 which is now available for download from the NextGen website.”<sup>73</sup>

112. Incident #1027743 indicates the gender field in the patient demographics was changing without warning.<sup>74</sup> On December 29, 2012 NextGen closed the incident after

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<sup>67</sup> SDE Data Extract Spreadsheet, sheet 24, row 180.

<sup>68</sup> SDE Data Extract Spreadsheet, sheet 24, row 573.

<sup>69</sup> SDE Data Extract Spreadsheet, sheet 24, row 573.

<sup>70</sup> SDE Data Extract Spreadsheet, sheet 24, row 181.

<sup>71</sup> SDE Data Extract Spreadsheet, sheet 24, row 181.

<sup>72</sup> SDE Data Extract Spreadsheet, sheet 24, row 410.

<sup>73</sup> SDE Data Extract Spreadsheet, sheet 24, row 410.

<sup>74</sup> SDE Data Extract Spreadsheet, sheet 24, row 253.

determining it is resolved in KBM 8.0 SP1 and higher.<sup>75</sup>

113. A complete list of MRH-reported incidents improperly closed by NextGen on the suggestion that MRH upgrade the Software is included as Attachment 5.

**i. CONTRARY TO CUSTOMARY RELEASE MANAGEMENT PRACTICES, NEXTGEN USED MAJOR RELEASES PRIMARILY TO FIX DEFECTS RATHER THAN TO ENHANCE FUNCTIONALITY.**

114. NextGen's practice of fixing defects by means of releasing new "major versions" of the Software, rather than by releasing "minor" or "maintenance" versions, was not only inconsistent with customary software release management practices, but also unfairly disadvantaged MRH by prematurely freeing NextGen of its contractual support obligations with respect to the licensed Software.

115. Typically, in order to support a major version of their software, developers will release one or more "minor" or "maintenance" versions for the express purpose of fixing known defects in that major version. By contrast, developers will less frequently release a "major" version for the primary purpose of enhancing the pre-existing functionality, for example by adding a suite of new features. Based upon my review of the Software release notes, however, it does not appear to me that there is any appreciable distinction between the "minor" and "major" versions. Both are predominantly directed towards fixing bugs, rather than enhancements. As NextGen was only required to support the three most recently released major versions of the Software, NextGen had a financial incentive to designate versions primarily intended to fix defects as "major versions," rather than "maintenance versions." By doing so, NextGen could escape its support obligations more

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<sup>75</sup> SDE Data Extract Spreadsheet, sheet 24, row 253.

quickly.<sup>76</sup> However, NextGen's major releases contained mostly bug fixes and not added functionality.

116. I located and reviewed release notes both from NextGen's Client Support Center and from the combined production of MRH and NextGen. Release notes came in two flavors: PDF files detailing changes to the Software at a high level, with descriptions and screenshots; and spreadsheets which explicitly detail the scope and type of changes to the Software implemented by the new release. I reviewed all available release notes and related spreadsheets.

117. While formatting conventions were not strictly adhered to, the release notes spreadsheets all contain a summary page, listing the categories detailing changes to the KBM software, as well as the number of changes within each category. The categories vary some between release note spreadsheets. Categories of changes include: "KBMRequest", "Enhancement", "Requirements", "Scripting", "New Development", "UIX" ("User Interface Executive"), "Admin", and "Defect". The creation of these release notes, as well as the categorization of changes to the KBM software, appears to have been performed by NextGen. An example of this summary page appears below, for reference.

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<sup>76</sup> Maintenance differs from a major release in that the former refers to the modification of a software product to correct faults or improve performance and the latter contains substantial changes to a piece of software. Definition available at: <http://http://foldoc.org/maintenance> and <http://foldoc.org/major+release>.

NextGen KBM Release Notes, Version 8.3

Row Labels	Count of Type
KBM	953
Defect	925
Scripting	6
Enhancement	21
KBMRequest	1
Grand Total	953

Title Copyright Revision History Read Me Summary Defects

**Summary sheet from a file named: "NextGen\_KBM\_Release\_Notes\_Version\_8.3.xlsx"**

118. While no single industry standard exists on how software versioning should be handled, customary practice is that major releases will not be merely revisions or bug fixes, but will contain substantial changes to functionality. In contrast, minor releases or maintenance releases will contain mostly bug fixes and not substantial changes to functionality.<sup>77</sup> I reviewed the release notes spreadsheets in order to determine whether the major releases of the Software contained primarily fixes to defects, or whether the major releases were largely enhancements to functionality.

119. No release note spreadsheets for KBM major versions 7.9 or 8.0 were available on the NextGen Client Support Center, or in the documents that have been produced by MRH and NextGen. I was able to find two release note spreadsheets for version 8.0.1. However, these sheets lack the summary information containing the categorization of

<sup>77</sup> Definition available at: <http://foldoc.org/major+release>:

A release of a piece of software which is not merely a revision or a bug fix release but which contains substantial changes (e.g., an overhaul of the interface, change in compatibility).

Traditionally, major releases are numbered as X.0; for example, WordPerfect 6.0 is a major release, significantly different from any previous version; whereas WordPerfect 6.1 has only minor changes, and is, thus, only a revision.

See also major delivery.

defects. I hope to receive these release note spreadsheets for KBM version 7.9 and 8.0 from new production, and at that time I will expand or revise my opinion via a Supplemental report.

120. I reviewed the release note spreadsheets for KBM Versions 8.1 and 8.3 as exemplary of major releases of the KBM software.<sup>78</sup> I reviewed the release note spreadsheets for minor releases that were available to me as well (KBM 8.3.1-8.3.8, 8.1.1, 8.1.6, 8.1.7, and 7.9.3).<sup>79</sup> I classified “KBMRequest,” “Enhancement,” “New Development,” and “User Interface Executive” (“UIX”), as enhancements made to the software. I classified “Scripting,” “Admin,” “Requirements,” and “Defect” categories as defects, as the one “Admin” entry is actually a defect, the “Requirements” appear to be failures to provide necessary functionality, and the “Scripting” entries are included on the “Defects” sheet of the KBM Version 8.3 release notes.

121. First I reviewed the release notes spreadsheets for the minor versions for the NextGen KBM Software.<sup>80</sup> NextGen itself considered these to be minor versions, so I analyzed them to get a sense of what percentage of each version contained: 1) defect fixes; versus 2) enhancements. My results are detailed in the three tables below.

Changes in Minor Release 7.9.3				
KBM Version	Defect Fix	Enhancement	% Defect Fixes	% Enhancements
7.9.3	311	6	98%	2%

Changes in Minor Releases 8.1.x				
KBM Version	Defect	Enhancement	% Defect Fixes	% Enhancements

<sup>78</sup> Files named: NextGen\_KBM\_Release\_Notes\_Version\_8.3.xlsx; and NextGen\_KBM\_Version\_8\_1\_Release\_Notes\_V1.0 FINAL DRAFT FOR GR.xlsx.

<sup>79</sup> Release notes spreadsheets for 8.3.8 and 8.1.7 included data for all previous minor releases of that version. 8.1.7 contained notes on 8.1.1-8.1.7; 8.3.8 contained notes for 8.3.1-8.3.8.

<sup>80</sup> KBM Versions 7.9.3, 8.1.1-8.1.7, and 8.3.1-8.3.8.

	<b>Fix</b>			
8.1.1	116	1	99%	1%
8.1.2	26	1	96%	4%
8.1.3	41	7	85%	15%
8.1.4	50	2	96%	4%
8.1.5	73	1	99%	1%
8.1.6	77	2	97%	3%
8.1.7	59	0	100%	0%
<b>8.1.x Totals</b>	<b>442</b>	<b>14</b>	<b>97%</b>	<b>3%</b>

<b>Changes in Minor Releases 8.3.x</b>				
<b>KBM Version</b>	<b>Defect Fix</b>	<b>Enhancement</b>	<b>% Defect Fixes</b>	<b>% Enhancements</b>
8.3.1	110	5	96%	4%
8.3.2	83	0	100%	0%
8.3.3	172	0	100%	0%
8.3.4	99	2	98%	2%
8.3.5	121	0	100%	0%
8.3.6	100	0	100%	0%
8.3.7	174	0	100%	0%
8.3.8	276	0	100%	0%
<b>8.3.x Totals</b>	<b>1135</b>	<b>7</b>	<b>99%</b>	<b>1%</b>

122. I found the percentage of defect fixes compared to enhancements for minor releases of the KBM software stayed within the ranges of 97% to 99% defect fixes, 1-3% enhancements, on average, for each set of minor releases. The highest percentage of enhancements in a minor release is 15% for 8.1.3, but all 15 other minor releases contain 4% or fewer enhancements.

123. Next I reviewed the release note spreadsheets for the major releases of the KBM



software.<sup>81</sup> NextGen itself considered these to be major versions, so I analyzed them to get a sense of what percentage of the each version contained: 1) defect fixes; versus 2) enhancements. My results are detailed in the table below.

Changes in Major Releases				
KBM Version	Defect Fix	Enhancement	% Defect Fixes	% Enhancements
8.1	1265	174	88%	12%
8.3	931	22	98%	2%

124. While NextGen did resolve a greater number of defects with its “major releases” compared to its “minor releases,” the major version for KBM 8.3 was unduly billed as a new major version. KBM Version 8.3 primarily contained bug fixes and not updated new functionality, only 2% of the changes to the software qualified as enhancements. It is not customary release management practice for a major release to consist almost exclusively of bug fixes. The release notes spreadsheets for KBM major versions 7.9 and 8.0 may also show that those versions were predominantly fixes to defects, but I have no way to determine this without reviewing those spreadsheets, which have not been produced.

125. By billing KBM Version 8.3 as a “major release” when it only contained 2% new functionality, NextGen unduly increased the version of its KBM software by a major version, for what should have been a minor version, and thereby escaped its duty to support the version MRH was using – KBM Version 7.9.

**ii. NEXTGEN IMPROPERLY CLOSED INCIDENTS TO AVOID ITS CONTRACTUAL SUPPORT OBLIGATIONS.**

126. I have determined that of the 572 MRH-reported incidents, NextGen improperly closed 31 incidents (~5%) on the suggestion that MRH upgrade the Software.

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<sup>81</sup>KBM Versions 7.9.3, 8.1.1-8.1.7, and 8.3.1-8.3.8.

127. As explained above, it is not sufficient to address report defects by requiring a client to upgrade from a supported version of the Software.

128. Moreover, in reviewing the 572 MRH-reported incidents, I noticed that in some cases, MRH staff had mentioned in an incident's "Description" field that NextGen had closed a prior reported incident without resolving the underlying issue. For example, Incidents #772174, #772774, #772779, and #772781 all reported the inability of training staff to access document or images, or to set up or generate Crystal Reports. NextGen closed all four incidents between January 25 and 26, 2011. However, on February 16, 2011, MRH staff opened Incident #784503 indicating "[t]he DB is still missing images, documents and showing other areas....[t]his was critical before but now threatens the entire project timeline."<sup>82</sup>

129. Additionally, MRH opened Incident #1045628 reporting a problem with the "Telephone Call" template's ability to correctly populate the "tasked to" box. NextGen closed the incident on July 20, 2012. Merely three days later, on July 23, 2013, MRH staff submitted Incident #1100546 requesting further assistance with the same issue.<sup>83</sup>

130. Similarly, MRH opened Incident #1514902 reporting an error with running provider number reports. NextGen closed this incident on February 25, 2014, indicating that it would fix the records causing the issue. Two days later, MRH submitted Incident #1517895, indicating that the provider number reports would still not run.<sup>84</sup>

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<sup>82</sup> NextGen Client Support Center, (available at: [https://knowledge.nextgen.com/pe/action/changedeviceview?deviceType=full&portalPageId=10144656&channelID=10144856&contentTag=QL\\_SupportLifecycle](https://knowledge.nextgen.com/pe/action/changedeviceview?deviceType=full&portalPageId=10144656&channelID=10144856&contentTag=QL_SupportLifecycle)).

<sup>83</sup> NextGen Client Support Center, (available at: [https://knowledge.nextgen.com/pe/action/changedeviceview?deviceType=full&portalPageId=10144656&channelID=10144856&contentTag=QL\\_SupportLifecycle](https://knowledge.nextgen.com/pe/action/changedeviceview?deviceType=full&portalPageId=10144656&channelID=10144856&contentTag=QL_SupportLifecycle)).

<sup>84</sup> NextGen Client Support Center, (available at: [https://knowledge.nextgen.com/pe/action/changedeviceview?deviceType=full&portalPageId=10144656&channelID=10144856&contentTag=QL\\_SupportLifecycle](https://knowledge.nextgen.com/pe/action/changedeviceview?deviceType=full&portalPageId=10144656&channelID=10144856&contentTag=QL_SupportLifecycle)).

## **IX. CONCLUSION**

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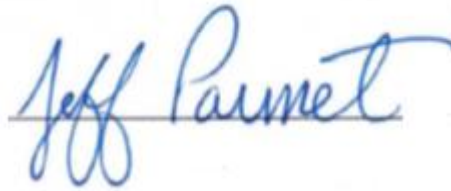
131. As discussed in greater detail throughout my report, I have reached the following opinions, all of which I state with a reasonable degree of professional certainty.

132. The NextGen Software did not function in the manner described in the User Materials.

133. NextGen failed to meet its contractual obligations to fix defects within a reasonable amount of time.

134. NextGen failed to fulfill its responsibility to support KBM Version 7.9.

Respectfully submitted,

A handwritten signature in blue ink, reading "Jeff Parmet". The signature is written in a cursive style with a horizontal line underneath the name.

Jeff C. Parmet

Date: February 2, 2015

# **Attachment 1**

**JEFF C. PARMET**

**DISPUTESOFT**

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<b>POSITION</b>	Principal, DisputeSoft, Potomac, MD
<b>EDUCATION</b>	B.A., Cornell University, 1969 J.D., <i>cum laude</i> , University of West Los Angeles (UWLA) School of Law, 1977
<b>CURRENT RESPONSIBILITY</b>	<p>Mr. Parmet retired from PricewaterhouseCoopers in 2003 after 22 years with the firm where from 1996 until his retirement, he had responsibility for leading the firm's system failure and software IP practices—consulting and expert testimony related to computer software and services disputes and intellectual property infringement claims. Mr. Parmet also led PwC's electronic discovery and computer forensics practice in Washington, DC. Until 1996, he was responsible for PwC's system's integration business where he both negotiated software license and services agreements and led the implementation of complex systems projects. Mr. Parmet also was a leader in the development of PwC's business process outsourcing business. Upon his retirement from PwC in 2003, Mr. Parmet founded Jeff Parmet and Associates LLC (now DisputeSoft). DisputeSoft specializes in software failure disputes, software IP infringement claims, outsourcing project disputes, electronic discovery and computer forensics.</p>
<b>OVERVIEW OF EXPERIENCE</b>	<p>Mr. Parmet has 40 years' experience in information technology with emphasis on software design, development, testing and operations, project management, systems integration, and intellectual property. His experience includes the full lifecycle of software development from business requirements definition to functional and technical specifications to system design, development, testing, deployment and licensing.</p> <p>He has worked as a project manager on software development projects both large and small using a variety of software engineering, project management and costing methodologies. He has led implementations and evaluations of many types of software applications such as ERP, HR, accounting, financial management, insurance claims processing and CRM. He has worked extensively with leading HR and ERP software products such as SAP and Oracle, as well as with large custom systems.</p> <p>His industry experience includes financial services, insurance, retail, manufacturing, government, utilities, emergency response and automotive, among others. He has negotiated numerous software license, software services, and software maintenance agreements, and has evaluated service levels in outsourcing contracts.</p>

**OVERVIEW OF  
EXPERIENCE  
(CONTINUED)**

Since 1996, he has served as consultant and/or been designated testifying expert on cases involving computer system implementation and service failures. He has also served as an expert on leading trade secret, copyright and patent infringement disputes. He also has extensive experience in e-commerce and serves as a technical adviser to two e-commerce start-up companies.

**PROFESSIONAL  
AFFILIATIONS**

State Bar of California  
American Bar Association  
- Litigation Section  
- Computer and Internet Litigation Committee  
Association for Computing Machinery (ACM)  
Project Management Institute (PMI)  
IEEE

**PROFESSIONAL  
AND  
EMPLOYMENT  
HISTORY**

DisputeSoft (Formerly Jeff Parmet and Associates LLC); July 1, 2003 to present; founder and sole member.

PricewaterhouseCoopers LLP (Formerly, Price Waterhouse LLP); Partner, 1988 to 2003; Senior Manager, 1984 to 1988; Manager, 1982 to 1984. Member of Management Consulting Services (MCS) division until 1996. Thereafter, member of Dispute Analysis and Investigations practice (DA&I).

Informatics: Sr. Systems Consultant, 1980 to 1982. Provided litigation support software and litigation consulting services in complex litigation.

Litton Industries: Sr. Systems Consultant, 1977-80. Developed one of first litigation support services for use by litigators in then-emerging field of litigation support.

California Federal: Systems Engineer, 1975-1976. Designed, developed and implemented first point-of-sale system (POS) for real-time electronic funds transfer.

United California Bank: Systems Engineer, 1973-1975. Designed and developed real-time applications for processing teller transactions including, *inter alia*, deposits, withdrawals and loan payments.

Metropolitan Life: Programmer, 1970-1973. Developed a variety of software applications for policy underwriting and lending; managed a data communications network linking 93 district insurance offices to a central location.

**PROFESSIONAL  
EXPERIENCE AS A  
CONSULTING AND  
TESTIFYING  
EXPERT**

*Credit Acceptance Corporation ("CAC") v. Westlake Financial Services LLC (2013)*

In a patent infringement suit regarding the generation of financing packages for products in a dealer's inventory, assisted in the preparation of a covered business method (CBM) patent review petition, on the basis that the patent at issue claimed non-statutory subject matter and lacked written description. Prepared declaration in support of petition for post-grant review under 35 U.S.C. §321 and §18 of the Leahy-Smith America Invents Act ("AIA"). Petition filed in October 2013.

*AMC Technology, L.L.C. v. Cisco Systems, Inc. (2013)*

Designated as testifying expert in this software development and licensing dispute involving plaintiff's development of connectors and adaptors to integrate Siebel CRM software with Cisco's call center interface. Reviewed the project record to determine the causes of delay and whether the defendant was justified in withdrawing resources from the project prior to the completion of testing. Reviewed adherence to contractual and industry standards for testing and issue identification and resolution.

*City of Mentor, Ohio v. Chenosa Systems Corporation d/b/a ProPhoenix (2013)*

Designated initially as rebuttal expert in this dispute involving implementation of public safety software to assess whether there was an adequate basis for the opinions rendered by plaintiff's expert. Subsequently issued an affirmative report rendering opinions as to whether there were legitimate obstacles to go-live, whether non-critical issues were improperly classified as critical, and whether the number of defects the City purported to be in the ProPhoenix software was excessive or in line with industry norms.

*Planet Bingo, LLC and Melange Computer Services, Inc. v. VKGS, LLC, d/b/a Video King (2012)*

Designated as testifying expert for plaintiff in this software misappropriation case involving bingo gaming software. Performed comparison of plaintiff and defendant software, functionality and documentation; determined that defendant's software and functionality was substantially similar to and deliberately copied from plaintiffs.



**PROFESSIONAL  
EXPERIENCE AS A  
CONSULTING AND  
TESTIFYING  
EXPERT  
(CONTINUED)**

*Geologic Computer Systems, Inc. v. John D. Maclean, et al.*  
(2012)

Designated as testifying expert for defendant in this copyright infringement dispute involving software for oil and gas exploration. For invalidity report, analyzed the printed deposit material plaintiff submitted to the U.S. Copyright Office with the copyright registration and determined that the deposited source code was comprised entirely of files that were: (a) of third-party authorship, i.e., not original authorship that can be attributed to plaintiff; or (b) not part of any version of plaintiff's released software; accordingly, plaintiff failed to meet the deposit requirement for registering a valid copyright. Moreover, analysis showed that the printed deposit material that plaintiff submitted as part of its application for copyright registration did not match the content of

Corresponding files on the plaintiff's produced source code CD. Finally, analysis showed that plaintiff's copyright application and registration certificate materially misrepresented that plaintiff was the author of the "Entire Work," as plaintiff knew that the work contained material authored by third parties, including material authored by defendant prior to his employment with plaintiff.

*Frontline Placement Technologies, Inc. v. CRS, Inc.* (2011)

Designated as testifying expert in this patent infringement suit involving a system and method for performing automated substitute-teacher fulfillment. Reviewed source code and the Frontline patent prosecution history, researched and analyzed prior art references, and issued expert reports regarding both non-infringement and invalidity. Concluded that the disputed claims were invalid and that CRS's software program did not infringe the Frontline patent. On September 16, 2012, under the Leahy-Smith America Invents Act ("AIA"), CRS filed a petition with the Patent Trial and Appeal Board ("PTAB") of the U.S. Patent and Trademark Office for post-grant review of the validity of Frontline's patent claims. In its petition, CRS argued that the claims of Frontline's patent recited unpatentable subject matter and lacked adequate written description. Prepared a declaration in support of CRS's petition, which the PTAB granted. After conducting a transitional covered business method review of the Frontline patent, on January 21, 2014, the PTAB held that all Frontline patent claims at issue were invalid and unpatentable under Section 101 of the Patent Act. The PTAB's decision is subject to appeal before the United States Court of Appeals for the Federal Circuit.

**PROFESSIONAL  
EXPERIENCE AS A  
CONSULTING AND  
TESTIFYING  
EXPERT  
(CONTINUED)**

*DeLuca Enterprises, Inc. and DeLuca Office Associates, G.P. v. SAP America, Inc. & IDS Scheer Americas, Inc. (2011):*

In a case alleging overselling and under delivering ERP software for a homebuilding company, conducted an analysis to determine the extent to which the ARIS business process models that the integrator brought to the project were applicable to the client's business processes, such as construction financing and consumer lending. Determined that the integrator's representations as to the applicability and usability of the ARIS models were not accurate. Tested these ARIS models using automated semantic rules and consistency checks to determine that no model passed all applied semantic rules and the models could not be used to synchronize with SAP Solution Manager.

*InDyne, Inc. v. Abacus Technology Corp.:* Designated testifying expert in this software copyright infringement case involving a government contract to deliver communications and information technology services at NASA's Kennedy Space Center (KSC). The outgoing vendor (InDyne) alleged that the incoming vendor (Abacus) misappropriated InDyne's software. Work involved assessing validity of InDyne's copyright registration. The Court dismissed InDyne's claim on summary judgment, finding that InDyne's software changed over time as it developed new features, but InDyne never registered the original version with the U.S. Copyright Office and failed to maintain a copy of the original version. The second version was used on the NASA contract and was registered, but the previous version should be excluded from copyright protection. Since InDyne failed to maintain a copy of the original version, it was incapable of meeting its burden of proving which portions of its code were protectable and which were not. Wrote expert report. Case dismissed on summary judgment.

*BearingPoint v. United States (Department of Interior):* The Department of Justice represented the Department of Interior (DOI) in this software failure matter wherein DOI contracted to outsource and undertake replacement of a myriad of legacy Finance and Accounting systems with leading Enterprise Resource Planning systems SAP. Performed schedule delay analysis to establish that agency's termination for cause was inappropriate due to excusable delays caused by the agency. Performed percent complete analysis and earned value management (EVM) analysis to determine damages owed Plaintiff under proper termination for convenience. Assessed software development lifecycle methodology followed by the vendor for conformance to industry best practices. Wrote expert and rebuttal reports. Case settled.

**PROFESSIONAL  
EXPERIENCE AS A  
CONSULTING AND  
TESTIFYING  
EXPERT  
(CONTINUED)**

*ACS v. Micro Focus:* A large data center outsourcer subcontracted a migration project to Micro Focus, which failed. Performed root cause analysis, which included evaluation of the migration plan, processes and procedures for transferring source code from the mainframe to Windows, and review of source code developed for the new system. Case settled.

*Apple v. HTC:* In smartphone patent infringement litigation before the International Trade Commission, managed source code review for mobile and desktop operating systems. Supported invalidity, non-infringement and lack of domestic industry contentions through research, code review and claim charts.

*ConnectU (Winklevoss Twins) v. Facebook and Mark Zuckerberg:* In a software trade secret misappropriation case brought by the founders of a social-networking site against a former employee alleged to have misappropriated ideas used in developing Facebook, forensically analyzed source code for trade secret misappropriation. Performed industry-standard software analyses to determine if the software could have been developed in the timeframe asserted by defendant without the benefit of plaintiff's intellectual property. Performed prior art analysis of other social networks. Case settled prior to report issuance.

*Waste Management v. SAP:* In software failure matter brought by a large Waste and Recycling company against a leading Enterprise Resource Planning (ERP) software vendor, provided expert opinions in support of plaintiff's allegations of fraud, misrepresentation, and breach of contract by the defendant. Plaintiff alleged the vendor knowingly and willfully misrepresented that it had an "out-of-the-box" solution but instead delivered incomplete and untested software resulting in a failed implementation. Analyzed documents, testimony, and industry standards to establish defendant's violations of business ethics and industry standards for Project Management and Software Engineering. Wrote expert report. Case settled.

*Sony ATV Music Publishing v. Cavs USA and Ace Karaoke:* In a copyright infringement action brought by a music publisher alleging claims of sales of unlicensed copyrighted works on e-commerce websites, recovered evidence of unauthorized sales of downloadable works over a period of three years. Researched various sources, including the Internet Archive, in support of license holder claims. Issued expert report. Case settled.

**PROFESSIONAL  
EXPERIENCE AS A  
CONSULTING AND  
TESTIFYING  
EXPERT  
(CONTINUED)**

*Mecklenburg County, North Carolina v. Nortel:* In a software failure action brought by a county government against a large government contractor and developer of criminal justice and law enforcement software, rebutted plaintiff's expert report alleging software defects and violations of software engineering standards. Wrote rebuttal report. Case settled.

*Marketing Technology Solutions v. MediZine:* In this software copyright infringement case for misappropriation of plaintiff's sales lead generation software, compared source code from both parties to determine whether defendant's code was copied or derived from plaintiff's code. Issued expert report. Case settled.

*Hudec Dental v. Multimedia Marketing:* In a dispute over a failed implementation of a Dental Practice Management System brought by a large dental practice against the software vendor, determined through extensive testing that the software as installed was materially defective, non-conforming with agreed-upon specifications, missing promised functionality, riddled with security holes, and incapable of supporting the business operations for which it was acquired, including customer's daily transaction volumes. Wrote expert report. Case settled.

*Prodomax v. Encompix:* In a software failure arbitration brought by a provider of automated manufacturing solutions against a developer of Enterprise Resource Planning (ERP) software for Engineer-to-Order Manufacturers, rebutted claimant's expert report alleging the software was delivered late and did not meet the customer's requirements. Analyzed software and performed functional validation testing to determine conformance to contractual requirements. Wrote rebuttal report. Case settled.

*Certification Trendz v. Ning Zhou:* Investigated foreign theft and sale of intellectual property in the form of exam preparation materials as well as trademark misappropriation. Analyzed registration information and online materials to find defendant was in contempt of a preliminary injunction. Proffered declaration on behalf of Certification Trendz. Case settled.

*MedCorp v. Zoll Data Systems:* In a civil action involving defendant's implementation of commercial off-the-shelf dispatch and billing software for plaintiff, an ambulance company, rebutted plaintiff's assertions of defective database design, which allegedly resulted in slow performance

**PROFESSIONAL  
EXPERIENCE AS A  
CONSULTING AND  
TESTIFYING  
EXPERT  
(CONTINUED)**

and the inability of the software to support 80 users and plaintiff's daily transaction volumes. Analyzed defendant software and database architecture. Identified the underlying causes of performance problems, which were, among other reasons, the result of plaintiff's failure to adhere to published vendor specifications for hardware configuration and current operating system and database versions. Issued expert report and rebuttal report. Gave depositions on each. Case was dismissed.

*Metropolitan Government of Nashville and Davison County v. Affiliated Computer Services, Inc. (ACS):* In a civil matter involving defendant's implementation of commercial off-the-shelf software for plaintiff, a municipal traffic agency, interviewed fact witnesses, examined case documents, performed extensive functional software validation testing, conducted detailed schedule delay analysis to rebut plaintiff's claims of delay, misrepresentation and software engineering failures. Wrote expert report. Deposition given. Case settled.

*McIntosh v. State Farm Insurance:* Served as a court-appointed computer forensic expert in a Hurricane Katrina related case. Work involved recovery of insurance claim data from a damaged hard drive. Issued status reports to the Court containing results of forensic recovery of data requested by the parties.

*Property Insurance Association of Louisiana v. Strategic Business Solutions:* In a software failure and copyright infringement arbitration brought by a state insurance agency against an IT consulting firm, analyzed software code and project documents to determine if respondent violated Project Management and Software Engineering industry standards. Analyzed source code for substantial similarity in accordance with the abstraction-filtration comparison test to determine if defendant infringed on claimant's copyrighted intellectual property in subsequent client engagements. Wrote expert report. Case settled.

*William Morgan P.C. v. Wiswell and Murphy:* In this civil action under the Computer Fraud and Abuse Act, in which former employees hacked into their former employer's network and redirected confidential emails to their Yahoo! account, performed investigation and collected and analyzed evidence from network logs and hard drives, which established the defendants' violations. Report issued. Case settled.

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EXPERIENCE AS A  
CONSULTING AND  
TESTIFYING  
EXPERT  
(CONTINUED)**

*Gas Transmission Northwest v. SunGard:* In arbitration involving a dispute over the development of gas pipeline scheduling software, concluded that (a) Vendor failed to deliver to customer promised functionality materially in accordance with documented requirements, and (b) system performance failed to meet the specifications of the contract and could not support customer's business volume. Wrote expert report and gave deposition testimony. Customer awarded full amount of damages sought at arbitration hearing.

*Visa USA Inc. v. Maritz Inc.:* In a software failure arbitration brought by an international credit card company against a sales and marketing services company, performed schedule delay analysis and document review to rebut claimant's allegations that respondent caused inexcusable delays in the project and violated industry standards for project management and software engineering. Case settled prior to issuance of expert report.

*Force Protection v. Protected Vehicles:* In a trade secret misappropriation case brought by a manufacturer of blast-resistant military vehicles against former officers and directors who had moved to a competitor, forensically examined hard drives taken by the defendants prior to departing from plaintiff's employ. Analysis of these drives indicated that key trade secrets of plaintiff were taken. Issued affidavit accordingly. Case settled prior to deposition and trial.

*Lands' End v. Trilogy Software:* In a software failure and copyright infringement matter brought by a direct catalog merchant against an enterprise CRM software vendor, analyzed project documents and software code to establish project management and software engineering failures and determine the causes of those failures. Performed functional and performance testing of software. Also examined code to establish copyright infringement by defendant. Case settled prior to issuance of expert report.

*IAS v. Paraben:* In a dispute over failure to comply with court-ordered ESI production, forensically examined ESI for compliance with Court's orders, identifying deficiencies in compliance. Issued three affidavits and attended hearings. Case settled.



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EXPERIENCE AS A  
CONSULTING AND  
TESTIFYING  
EXPERT  
(CONTINUED)**

*City of West Palm Beach v. VisionAir:* In a software failure matter brought by a municipal law enforcement agency against a Police, Fire and EMS Computer-Aided Dispatch software product vendor, analyzed modules including project documents and help desk data to rebut plaintiff allegations of project management, software engineering, and product support failures. Wrote expert report. Case settled.

*Massoud Sedigh v. Global Signal, Inc.:* In an arbitration involving alleged wrongful termination of a CIO 30-days prior to the vesting of his stock options, interviewed fact witnesses, examined case documents, and consulted industry standard references to rebut respondent's allegations of the CIO's project management and system implementation performance failures. Wrote expert report. Case settled.

*Central Provident Fund Board (of Singapore) v. IBM Singapore PTE LTD:* This was a software failure matter involving is a compulsory comprehensive savings plan for working Singaporeans and permanent residents primarily to fund their retirement, healthcare, and housing needs. In this action brought by a foreign government agency against a global computer technology company, reviewed functional requirements and business processes, interviewed fact witnesses, analyzed project documents and software to rebut plaintiff allegations of project management and software engineering failures. Case settled.

*CTS v. BudgeText:* In a civil matter involving development of customized software to support operations of college bookstores brought by a software development and consulting company against a major distributor of used textbooks, interviewed fact witnesses, examined case documents, analyzed developed software, and consulted industry standard references to rebut defendant's counterclaims of project management and software engineering failures. Analyzed conversion and copyright issues. Case settled.

*Kaplan, McLaughlin, Diaz v. Lawson Software:* Dispute between architecture & engineering firm, and a software developer. Primary issues addressed were whether software functionality was misrepresented, as well as alleged delivery and implementation failures. Performed analysis of source and executable code and issued report. Also, provided affidavit in support of plaintiff's motion to compel discovery of defendant's source code.

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EXPERIENCE AS A  
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(CONTINUED)**

*EDS v. State of North Carolina DHHS:* In a state bid protest involving a Medicaid Management Information System (MMIS), my analysis led me to conclude that the winning bidder (ACS) had not complied with the (then) newer statewide technical architecture standards for a 3-tier/N-tier architecture. Work included assessing technical aspects of the systems architecture against the RFP and statewide architecture standards. Issued report and gave deposition testimony. EDS's motion for summary judgment was granted on the grounds that the State erred by failing to find ACS's bid nonresponsive to the RFP's mandatory requirement of compliance with the statewide technical architecture.

*Motorola Call Center Outsourcing:* In a dispute over cancellation of a call center outsourcing contract due to alleged failure to achieve agreed-to service levels, was engaged as an IT expert to assess whether the outsourcer had met contractually mandated service levels for call center performance. Analyzed impact of people, process and technology, particularly the Siebel Customer Relationship Management (CRM) software, on call center performance. Analyzed empirical data gathered for numerous metrics involved in outsourcer's call center operations. Identified material deviations from required service levels for several of the required metrics.



**OTHER  
PROFESSIONAL  
EXPERIENCE:  
PRIOR TO  
WORKING AS A  
CONSULTING AND  
TESTIFYING  
EXPERT**

Led IT portion of massive forensic investigation of Swiss banks to identify World War II-era dormant accounts. This engagement involved detailed review of more than 200 Swiss banks and their subsidiaries and affiliates on behalf of the Independent Association of Eminent Persons (IAEP), also known as the Volcker Commission. Computer file review of accounting information, restoration of older generation electronic media, and sophisticated computerized name matching techniques were employed due to the huge volume of information.

Negotiated software licensing agreements and hardware reseller agreements while leader of systems integration business unit.

To support Sallie Mae's student loan financing business, implemented under an outsourcing contract, a customer service system that replaces 3,000 IBM 3270 terminals with workstations running PowerBuilder-based applications at seven geographically dispersed locations across the United States. This system is used to manage 50 million documents per year electronically. This system represents one of the largest and most ambitious client-server implementations undertaken at the time. In addition to project planning and management, Mr. Parmet was responsible for all technical aspects of the project including system architecture, application and database development, network, hardware, integration and operating systems.

Directed the implementation and management of document databases for several multi-billion dollar lawsuits involving over a million documents and several hundred paralegals and document analysts in the pre-trial effort.

For California Federal Savings and Loan, developed and implemented one of the first point-of-sale systems for real-time electronic funds transfers.

For United California Bank, designed and developed software applications for processing teller transactions including, inter alia, deposits, withdrawals and loan payment processing.

For Metropolitan Life, managed a data communications network linking 93 district insurance offices to a central location; developed business applications for policy underwriting and lending.

**EXPERT  
TESTIMONY AND  
REPORTS  
DURING PAST 4  
YEARS**

Engaged in March 2013 by AMC Technology in the matter of *AMC Technology, L.L.C. v. Cisco Systems, Inc.* in the United States District Court for the Northern District of California, Case No. 5:11-cv-03403. Expert report of Jeff Parmet proffered on behalf of AMC Technology on May 21, 2013. Deposition given September 20, 2013. Case pending.

Engaged in January 2013 by defendant Chenosa Systems in the matter of *City of Mentor, Ohio v. Chenosa Systems Corporation d/b/a ProPhoenix* in the United States District Court for the Northern District of Ohio, Case No. 1:12-cv-02264. Rebuttal expert report of Jeff Parmet proffered on behalf of Chenosa Systems on January 25, 2013 and affirmative expert report of Jeff Parmet proffered on behalf of Chenosa Systems on February 26, 2013. Case settled in March, 2013.

Engaged in April 2012 by Planet Bingo in the matter of *Planet Bingo, LLC and Melange Computer Services, Inc. v. VKGS, LLC d/b/a Video King* in the Circuit Court for the County of Ingham, Michigan, Case No. 11-1369. Expert report of Jeff Parmet proffered on behalf of Planet Bingo on April 1, 2013. Case Pending.

Engaged in 2012 by Alan Williams in the matter of *Geologic Computer Systems, Inc. v. John D. Maclean, et al.* in the United States District Court for the Eastern District of Michigan, Case No. 10-cv-13569. Expert invalidity report of Jeff Parmet proffered on behalf of Alan Williams on April 15, 2013. Expert non-infringement report of Jeff Parmet proffered on behalf of Alan Williams on May 15, 2013. Case Pending.

Engaged in 2011 by DeLuca Homes in the matter of *DeLuca Homes v. SAP America Inc. and IDS Scheer Americas, Inc.* in the Court of Common Pleas, Bucks County, Pennsylvania, Civil Action No. 0802365. Expert report of Jeff Parmet proffered on behalf of DeLuca Homes on December 21, 2012. Trial Testimony given May 17, 2013.

**EXPERT  
TESTIMONY AND  
REPORTS  
DURING PAST 4  
YEARS  
(CONTINUED)**

Engaged in 2013 by Defendant Westlake Financial Services LLC in the matter of *In Re* Post-Grant Review of U.S. Patent No. 6,950,807 in the United States Patent Trial and Appeal Board. Credit Acceptance Corporation (“CAC”) owns the ’807 patent. Prepared declaration in support of petition for post-grant review under 35 U.S.C. §321 and §18 of the Leahy-Smith America Invents Act (“AIA”). Petition filed in October 2013.

Engaged in 2011 by Abacus in the matter of *InDyne, Inc. v. Abacus Technology Corp.* in the United States District Court for the Middle District of Florida, Case No. 6:11-cv-137. Expert report of Jeff Parmet proffered on behalf of Abacus on January 23, 2012. Case dismissed June 1, 2012 on summary judgment.

Engaged in July 2011 by CRS, Inc. in the matter of *Frontline Placement Technologies, Inc. v. CRS, Inc.* in the United States District Court for the Eastern District of Pennsylvania, Case No. 2:07-cv-2457. Expert invalidity report of Jeff Parmet proffered on behalf of CRS August 19, 2011. Expert non-infringement report of Jeff Parmet proffered on behalf of CRS September 21, 2011. Expert reply report of Jeff Parmet proffered on behalf of CRS October 11, 2011. Deposition given October 25, 2011. On January 21, 2014, the PTAB entered its final decision rendering all relevant claims invalid and unpatentable under 35 U.S.C. § 101. The PTAB’s decision is subject to appeal before the U.S. Court of Appeals for the Federal Circuit.

Engaged in 2010 by Hudec Dental in the matter of *Hudec Dental v. Multimedia Marketing, Inc.* in the United States District Court for the Northern District of Ohio, Case No. 1:09-cv-1324. Expert report of Jeff Parmet proffered on behalf of Hudec Dental April 15, 2011. Case settled in June 2011 prior to depositions and trial.

Engaged in 2010 by Certification Trendz in the matter of *Certification Trendz, Ltd. v. Ning Zhou, et al.* in the United States District Court for the Eastern District of Virginia, Civil Action No. 1:09-cv-1214. Declaration of Jeff Parmet proffered on behalf of Certification Trendz May 16, 2010. Case settled prior to deposition and trial.

Engaged in 2009 by MediZine in the matter of *Marketing Technology Solutions, Inc. v. MediZine et al.* in the United States District Court for the Southern District of New York, Index No. 09-cv-8122. Preliminary Expert Report of Jeff Parmet proffered on October 26, 2009. Declarations of Jeff Parmet proffered on October 30, 2009 and November 25, 2009. Case settled prior to deposition and trial.

**EXPERT  
TESTIMONY AND  
REPORTS  
DURING PAST 4  
YEARS  
(CONTINUED)**

Engaged in 2009 by BearingPoint, Inc. in the matter of BearingPoint, Inc. v. United States Department of the Interior in the United States Court of Federal Claims, Civil Action No. 07-631C. Expert report of Jeff Parmet proffered on behalf of BearingPoint January 28, 2011. Rebuttal report of Jeff Parmet proffered on March 28, 2011. Case settled prior to expert depositions and trial in June 2011.

Engaged in 2008 by Zoll Data Systems in the matter of *MedCorp, Inc. v. Zoll Data Systems, Inc.* in the United States District Court for the District of Colorado, Civil Action No. 08-cv-00867-MSK-KLM. Expert report of Jeff Parmet proffered on behalf of Zoll February 6, 2009. Deposition of Jeff Parmet given April 17, 2009. Rebuttal report of Jeff Parmet proffered on July 6, 2009. Deposition of Jeff Parmet given April 30, 2010. Supplemental rebuttal report of Jeff Parmet proffered on June 16, 2010. Case dismissed March 16, 2011.

Engaged in 2008 by special master in the matter of *McIntosh v. State Farm Insurance*, U.S.D.C., Southern Dist Mississippi, Southern Division, Civil Action No: 1:06-CV-0180-LTS-RHW as forensic expert. Issued several status reports containing my findings to the Court from April through July 2008.

Engaged in 2008 by Nortel in the matter of *Mecklenburg County v. Nortel Government Solutions, Inc.* in the United States District Court for the Western District of North Carolina, Civil Action No. 3:07-cv-00320. Expert report of Jeff Parmet proffered on behalf of Nortel April 28, 2010. Case settled prior to expert depositions and trial.

Expert Report of Jeff Parmet proffered on behalf of Waste Management in the matter of *Waste Management, Inc. v. SAP AG and SAP America, Inc.*, January 6, 2010, in the District Court of Harris County, Texas, Cause No. 2008-17510. Case settled prior to deposition and trial. Engaged by Information Assurance Services (IAS) in the matter of *Information Assurance Services, LLC v. Paraben Corporation, et al.*, In the Circuit Court for Montgomery County, Maryland, Civil Action No. 286414. Provided testimony by way of affidavits from 2008 through 2010, when case settled.

Expert Report of Jeff Parmet proffered on behalf of Affiliated Computer Services, Inc. in the matter of *Metropolitan Government of Nashville and Davidson County v. Affiliated Computer Services, Inc. d/b/a ACS*

**EXPERT  
TESTIMONY AND  
REPORTS  
DURING PAST 4  
YEARS  
(CONTINUED)**

*Government Systems, Inc.*, December 13, 2007, filed in United States District Court Middle District of Tennessee. Deposition testimony given January 23-26, 2008. Supplemental Expert Report proffered on March 3, 2008. Deposition testimony given March 28, 2008 on Supplemental Report. Case settled prior to trial.

Engaged by Force Protection in the matter of *Force Protection Industries, Inc. v. Protected Vehicles, Inc. et al.*, filed in the United States District Court for the District of South Carolina, Charleston Division, C/A No. 2:07-02895. Affidavit of Jeff Parmet proffered on behalf of Force Protection September 29, 2008. Case settled prior to deposition and trial.

Engaged by Sony in the matter of *Sony ATV Music Publishing v. Cavs USA, Inc. et al.* in the United States District Court Middle District of Tennessee, Case No. 03:08-0265. Expert report of Jeff Parmet proffered on behalf of Sony September 15, 2008. Case settled prior to deposition and trial.

Engaged by Key Power in the matter of *Archonix Services, LLC v. Key Power International, Inc. et al.* in the Superior Court of New Jersey, Burlington County, docket number: BUR-L-1886-05. Expert report of Jeff Parmet proffered on behalf of Key Power December 12, 2008. Hearing testimony given December 15, 2008. Case settled in 2010.

**PUBLICATIONS  
DURING PAST 10  
YEARS**

"Challenging The Validity Of Software Copyright Registrations: The Deposit Copy Requirement," *IP Today*, March 2013.

# **Attachment 2**

Attachment – Methodology and Factual Findings

1. To identify those MRH-reported incidents that were not resolved within a reasonable timeframe before MRH filed suit, I first distinguished incidents that were open for 30 days or more from incidents that were closed within 30 days.<sup>1</sup> I began by downloading all 572 incidents recorded in MRH's account within NextGen's Client Support Center.<sup>2</sup> Next, I compared the "Open Date" and "Close Date" data fields in each incident to determine the number of days each incident remained open. I determined that, of the 572 total reported incidents, 465 incidents had an "Open Date" prior to September 23, 2013. Of these 465 incidents, I identified 117 incidents meeting one of the following two conditions: 1) the incident had a "Close Date" before September 23, 2013 that was at least 30 days subsequent to that incident's "Open Date"; or 2) the incident was opened at least 30 days before September 23, 2013 and was not closed as of September 23, 2013. Thus, according to the data contained in NextGen's own incident-tracking system, 117 (25%) of the MRH-reported incidents opened prior to September 23, 2013 were not resolved within a reasonable timeframe.

2. Next, in order to determine which of these 117 incidents related to material defects, I reviewed each incident to determine whether it involved functionality described in NextGen's User Materials.<sup>3</sup> To determine the nature of each reported incident, I

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<sup>1</sup> I understand that MRH filed its Complaint against NextGen on September 23, 2013.

<sup>2</sup> Available at: [https://knowledge.nextgen.com/pe/action/changedeviceview?deviceType=default&portalPageId=10132301&channelID=10&remoteAction=View\\_Incidents](https://knowledge.nextgen.com/pe/action/changedeviceview?deviceType=default&portalPageId=10132301&channelID=10&remoteAction=View_Incidents); There are actually 573 incidents reported by MRH into the Support Site, however, one of these incidents, #1187980, a request for a password reset, was not saved properly and thus no information was available for download.

<sup>3</sup> Other reasons include, but are not limited to, requests for system enhancements, duplicative incident submissions, and incidents for which additional documentation was needed from MRH before NextGen could begin troubleshooting.

Attachment – Methodology and Factual Findings

reviewed the following: 1) information contained in the incident's "Description" field; 2) any attached explanatory documentation such as screenshots, developer notes, e-mail communications; and, where applicable; 3) information contained in the incident's "Resolution" field. To determine whether the incident related to functionality described in the User Materials, I reviewed the Agreement, NextGen's User Materials, and correspondence between MRH and NextGen. Accordingly, I removed from consideration any incident for which I could not identify an associated functionality described in NextGen's User Materials.<sup>4</sup> I also removed those incidents for which the "Description" or "Resolution" field indicated that the incident was duplicative of pre-existing records.

3. I also reviewed assertions made by NextGen regarding the availability of bug fixes in service packs it released during the project. To be as conservative as possible, I removed incidents from my analysis that I determined NextGen addressed by means of service packs to the versions of the Software purchased by MRH. I found that, of the 117 incidents that were active for 30 or more days, 79 (68%) represented material defects in the Software. For purposes of this report, I refer to these 79 material defects as the "30+ Day Defects." A complete listing of the 30+ Day Defects is included as Attachment 3.

4. To determine which of the 30+ Day Defects were not resolved within a reasonable timeframe during the Warranty Period, I filtered out those 30+ Day Defects that were opened after September 28, 2011.<sup>5</sup> I determined that, of the 79

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<sup>4</sup> For example, I removed those incidents in which MRH clearly indicated in the "Description" field that they were requesting system enhancements. If MRH did not so indicate, I included the incident in my analysis even if NextGen classified the incident as an enhancement request.

<sup>5</sup> I understand from counsel that NextGen's Warranty Period ended on September 28, 2011.



Attachment – Methodology and Factual Findings

30+ Day Defects, 16 (~20%) were not resolved within a reasonable timeframe during the Warranty Period.

5. To evaluate and quantify which of the 30+ Day Defects related to functionality associated with defective KBM templates, billing, demographics, and/or e-Prescribing, I reviewed each of the 30+ Day Defects in detail as described in the preceding paragraphs. In particular, during my review of the User Materials describing the functionality at issue in each 30+ Day Defect, I noted whether the functionality at issue related to templates, billing, demographics, or e-Prescribing.<sup>6</sup> After completing this review, I determined that, of the 79 30+ Day Defects, 43 defects pertained to template errors, six defects pertained to billing errors, six defects pertained to e-Prescribing, and four defects pertained to demographics errors.<sup>7</sup>

6. I further reviewed the subset of 30+ Day Defects relating to template functionality to determine which templates caused these defects. As part of this review, I interviewed fact witnesses and reviewed those templates that MRH modified during the course of the project. I also reviewed the defect and problem listings produced by NextGen in the SDE Data Extract Spreadsheet. Based on this analysis I determined that at least seven of the 43 30+ Day Defects relating to templates were the subject of “Problems” and “Defects” in “Sheet 28” and “Sheet 29,” respectively, of the SDE Data Extract

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<sup>6</sup> As previously noted, at this point in my analysis I had already removed from the 30+ Day Defects those defects that had been allegedly resolved in KBM Versions 7.9.2 – 7.9.6. Thus, the template-related defects identified in this analysis include only those defects that were not addressed until at least KBM Version 8.0 or higher.

<sup>7</sup> Note that these categories are not mutually exclusive. Some template errors are also billing errors and/or e-Prescribing errors. Moreover, NextGen has not provided the data upon which these results are based in native format. Thus, these results may be subject to revision if NextGen produces the underlying data in native format.

## Attachment – Methodology and Factual Findings

Spreadsheet.<sup>8</sup> For each of these seven defects, I reviewed the associated “Problems” and “Defects” in the SDE Data Extract Spreadsheet. In particular, I determined: 1) when NextGen first became aware that the issue reported by MRH was caused by a defective template;<sup>9</sup> 2) in which versions of the Software did NextGen confirm the existence of the defect and what severity did NextGen assign to the defect;<sup>10</sup> 3) in which internal versions of the Software under development did NextGen’s purportedly fix the defect;<sup>11</sup> 4) in which released versions of the Software did NextGen purportedly release the fixes for

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<sup>8</sup> NextGen did not produce the data in native format upon which this conclusion is based. Thus, these results may be subject to revision if NextGen produces the underlying data in native format. NextGen produced the SDE Data Extract Spreadsheet, which is comprised of 19 sheets containing data from at least two separate systems. First, Sheet 24 appears to contain data extracted from the Support Site relating to 572 reported incidents. Second, Sheets 28 and 29 appear to contain data from a problem tracking and defect resolution system. Specifically, Sheet 28 contains data related to 81 “Problems,” each of which is identified by a “Sequence” ID#. Sheet 24 contains 572 “Incidents,” 84 (15%) of which contain a reference to a “Seq.ProbMgmt” number that corresponds to the “Sequence” ID# of a Problem listed in Sheet 28. Similarly, Sheet 29 appears to contain data related to 107 “Defects,” each of which references a “ProblemID” corresponding to the Sequence ID# of 50 unique Problems listed in Sheet 28. The “Defects” listed in Sheet 29 are themselves each apparently assigned a “Sequence” ID#, which uniquely identifies each Defect.

For example, Incident #1016341 in Sheet 24 references “Seq.ProbMgmt” #36699, which corresponds to Sequence ID #36699 in Sheet 28. Sheet 29 contains two defects, identified by Sequence ID #'s 50631 and 45728, that reference “ProblemID” #36699. Each of these records pertains to the same billing issue related to the “pe\_gyn\_exam” template. Sheet 24 shows that MRH reported Incident #1016341 on March 7, 2012. The data in Sheet 28 shows that NextGen identified the issue reported by MRH in Incident #1016341 as Problem ID #36699 on April 13, 2012. The data in Sheet 29 shows that two previously identified “Critical” severity Defects, Sequence ID#s 50631 and 45728, which were both opened on April 11, 2011, were identified as the cause of Problem ID #36699.

<sup>9</sup> For purposes of this analysis, I assumed that the “Request Date” column on “Sheet 29” corresponded to the date on which NextGen became aware that an issue was caused by a defective template. I further assume that the “Severity” column on “Sheet 29” corresponded to the severity assigned to the defect by NextGen.

<sup>10</sup> For purposes of this analysis, I assumed that the “Last\_PRV” column on “Sheet 29” indicated which Software versions contained the reported defect.

<sup>11</sup> For purposes of this analysis, I assumed that the “QC\_FixedInVer” column on “Sheet 29” indicated which internal versions of the Software under development contained NextGen’s purported fix.

Attachment – Methodology and Factual Findings

this defect;<sup>12</sup> and 5) the dates on which NextGen released such versions of the Software.<sup>13</sup>

7. In the process of reviewing the User Materials, I noticed that multiple incidents that related to functionality described in the User Materials had been mischaracterized by NextGen as requests for enhancements. To quantify the number of 30+ Day Defects that NextGen incorrectly classified as “enhancement requests,” I reviewed the “Resolution” field for each of the 30+ Day Defects and noted whether NextGen asserted that the defect was an enhancement request.<sup>14</sup> Of the 79 30+ Day Defects, NextGen incorrectly classified 11 as enhancement requests.

8. Finally, to determine whether NextGen upheld its support obligations under the Agreement, I reviewed the “Resolution” field of the 572 incidents recorded in MRH’s account within NextGen’s Client Support Center. In doing so, I noticed that NextGen had closed many incidents on the basis that the issues reported by MRH would be fixed only if MRH upgraded to a newer version of the Software. It is my understanding that NextGen’s support obligation extends until the general release of KBM Version 8.3, which occurred on January 17, 2014. I understand that NextGen sold KBM Version 7.9 and EHR/EPM Versions 5.6 to MRH. I further understand that NextGen was obligated to support these versions until at least the release of KBM Version 8.3.<sup>15</sup> I do not consider

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<sup>12</sup> For purposes of this analysis, I assumed that the “QC\_ClosedInVer” column on “Sheet 29” indicated whether NextGen released versions of the Software contained NextGen’s purported fix.

<sup>13</sup> For purposes of this analysis, I assumed that the “Closed Date” column on “Sheet 28” indicated the dates on which NextGen released such versions of the Software.

<sup>14</sup> As previously noted, at this point in my analysis, in the process of identifying the 30+ Day Defects, I had already filtered out all incidents related to MRH requests for enhancements and/or functionality that was not described in the User Materials.

<sup>15</sup> I understand that this support obligation may extend to EHR/EPM Versions 5.7 and 5.8 as well. However, I am not aware that a Version 5.9 has been released. As such, NextGen’s support obligation for the EHR and EPM products continues to the present date. Moreover, I understand that from the installation

## Attachment – Methodology and Factual Findings

the suggestion to upgrade to constitute a proper means of supporting software. However, I did not consider a suggestion to install service packs to KBM Version 7.9 and/or EHR/EPM Versions 5.6 to constitute an “upgrade” for the purpose of this analysis. Thus, for the purpose of my analysis, suggesting an “upgrade” means that NextGen asserted that the underlying issue had been corrected in KBM Version 8.0 or higher, and/or EPM/EHR Version 5.7 or higher, and did not offer a solution for the versions of the Software MRH had purchased.

9. Furthermore, to be conservative in my analysis, I did not consider incidents closed by NextGen after January 16, 2014, because the “Release Notes Summary” for NextGen KBM Version 8.3 indicates that the general release of this version occurred on January 17, 2014.<sup>16</sup> To quantify the incidents that NextGen never fixed in the versions of the Software they sold to MRH, I reviewed the “Close Date” and “Resolution” fields of all 572 MRH-reported incidents to determine which had been closed prior to January 17, 2014, on the basis of a suggestion to upgrade. I determined that 31 incidents were closed by NextGen prior to January 17, 2014 on the suggestion that MRH upgrade the Software.

10. In reviewing the 572 MRH-reported incidents, I noticed comments in the

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instructions for KBM Version 8.3, that installing this version of KBM would have required MRH to install EPM/EHR Version 5.8 or higher. Similarly, I understand that for MRH to install KBM Version 8.1 would have required the installation of EPM/EHR Version 5.7 or higher. Finally, I understand from discussions with MRH staff that, although MRH had requested to be placed in the queue for an upgrade to KBM Version 8.0, NextGen removed MRH from the queue and instead directed MRH to upgrade to Version 8.1 or higher on or about February 2013. Thus, given that MRH only had the option of upgrading to KBM Version 8.1 or higher, I understand that an upgrade of EPM/EHR to Version 5.7 or higher could not be avoided.

<sup>16</sup> I understand from counsel that NextGen’s commitment under the Agreement to support KBM Version 7.9 extended until the general release of KBM Version 8.3.

Attachment – Methodology and Factual Findings

“Description” field of certain incidents to the effect that NextGen had closed a previously reported incident without having actually resolved the underlying issue. To determine whether MRH had a legitimate basis for claiming that NextGen had prematurely closed certain incidents, I first attempted to identify which previously reported incidents were at issue. I noticed that, in certain cases, MRH referred to a previously reported incident by its specific incident number. I examined each such referenced incident and found that, in the “Resolution” field of some incidents, NextGen claimed to have fixed the underlying issue. However, upon reviewing the "Resolution" fields of the subsequently reported incidents, I found that NextGen indicated that it needed to take additional steps to fix the underlying issue. Therefore, I inferred from NextGen’s concessions that additional troubleshooting was required that it had prematurely closed the previously reported incidents. I discuss examples of such prematurely closed incidents later in this report.

# **Attachment 3**

## Attachment – List of 30+ Day Defects

Incident #	Incident Description	Relevant User Material(s)	Open Date	Close Date
765182	Client Reports application is hanging up when using the RVU library.	NextGen EPM User Guide, Version 5.6 SP1, p. 436	1/13/2011	3/4/2011
779390	User receives error messages when trying to log into Citrix Client servers	NextGen Implementation Start-Up Guide, p. 77	2/24/2011	3/22/2011
789547	User receives data type conversion errors when trying to edit “Weekly Templates” within “Scheduling Administration.”	NextGen EPM User Guide, Version 5.6 SP1, p. 113-117	2/24/2011	n.a.
792979	User would like to move forward with RTS Enrollment for April 26th Go Live	NextGen EPM User Guide, Version 5.6 SP1, p. 171 Software License & Services Agreement, Appendix 1, p. 1	3/2/2011	4/8/2011
794147	EPM freezes up during training sessions.	NextGen EPM User Guide, Version 5.6 SP1	3/4/2011	4/7/2011
794189	Database is not copying information from the Production server to the Reports Server.	NextGen EHR User Guide, Version 5.6 SP1, p. 753	3/4/2011	4/8/2011
829459	Unable to create fields and import/export documents into a form template.	NextGen EPM User Guide, Version 5.6 SP1, p. 62	5/6/2011	8/12/2012
840326	Cannot use the “Copy Provider Med” utility due to “excessive password length” error.	NextGen EHR User Guide, Version 5.6 SP1, p. 567	5/25/2011	11/4/2011
851461	Pop-up calendar does not choose dates when trying to print an ePrescribe Crystal Report.	NextGen EHR e-Prescribing Functionality Guide, Version 5.6 SP1, p. 101	6/14/2011	7/15/2011

## Attachment – List of 30+ Day Defects

Incident #	Incident Description	Relevant User Material(s)	Open Date	Close Date
		NextGen EHR User Guide, Version 5.6 SP1, p. 292-294		
856621	Unable to e-Prescribe to mail order pharmacies.	NextGen EHR e-Prescribing Functionality Guide, Version 5.6 SP1, p. 48	6/22/2011	7/25/2011
869002	Patient tracking numbers will not show in the “Workflow - Appointments” area.	Software License & Services Agreement, Appendix 1, p. 1	7/14/2011	12/26/2012
		NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 16		
		NextGen EPM User Guide, Version 5.6 SP1, p. 188		
879162	Incorrect user name appears on patient documents created during chart abstraction.	NextGen EHR User Guide, Version 5.6 SP1, p. 380	8/2/2011	12/1/2011
		NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 209		
881062	Cannot print documents using OB/GYN template.	Software License & Services Agreement, Appendix 1, p. 1	8/4/2011	11/1/2011
		NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 208		
		NextGen EHR User Guide, Version 5.6 SP1, p. 384		



## Attachment – List of 30+ Day Defects

Incident #	Incident Description	Relevant User Material(s)	Open Date	Close Date
881090	Nurse practitioner receives “invalid date” error message when trying to add a check mark to “system for review” on the OB/GYN post-visit template.	NextGen EHR User Guide, Version 5.6 SP1, p. 190	8/4/2011	12/20/2012
		Software License & Services Agreement, Appendix 1, p. 1		
890045	Primary care physicians entered in EPM are not appearing on home templates.	NextGen EHR User Guide, Version 5.6 SP1, p. 114	8/19/2011	1/17/2012
892654	Physician observations are not being saved or printed when conducting an OB/GYN patient examination.	NextGen EHR User Guide, Version 5.6 SP1, p. 481-496	8/24/2011	4/20/2013
		Software License & Services Agreement, Appendix 1, p. 1		
901134	Cannot send faxes to the pharmacy.	NextGen EHR User Guide, Version 5.6 SP1, p. 601	9/8/2011	10/12/2011
		NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 277-280		
909666	Subjective information does not save when using “Internal Meds - sinus problem acute.”	Software License & Services Agreement, Appendix 1, p. 1	9/21/2011	12/26/2012
		NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 248-252		
915476	Need to be able to run Eligibility Batch Results based on location such that only one location’s results appear on each report.	NextGen EPM User Guide, Version 5.6 SP1, p. 89-91	9/29/2011	1/31/2014

## Attachment – List of 30+ Day Defects

Incident #	Incident Description	Relevant User Material(s)	Open Date	Close Date
925466	When ordering a urine analysis with scope in the urology template, the results are not filling into the home template.	Software License & Services Agreement, Appendix 1, p. 1	10/14/2011	12/16/2013
942458	Printing appointment letters using the “Quick Print” option does not work.	NextGen EHR User Guide, Version 5.6 SP1, 384	11/9/2011	12/9/2011
		NextGen EPM User Guide, Version 5.6 SP1, 359		
948793	Off-site users cannot login to EHR over a Citrix connection.	NextGen EHR User Guide, Version 5.6 SP1, p. 10-14	11/21/2011	1/20/2012
958059	Lab requisitions are being printed with the incorrect diagnosis list.	NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 185-189	12/6/2011	4/21/2013
959508	The Urology – Catheterization/Intravesical treatment procedure template is generating incorrect procedure codes.	Software License & Services Agreement, Appendix 1, p. 1	12/8/2011	3/2/2014
976600	Need to implement MU 2012 on the HQM registry.	NextGen EHR e-Prescribing Functionality Guide, Version 5.6 SP1, p. 183	1/6/2012	4/19/2013
978337	Users receive error message indicating “unknown report type” when trying to access the Management Reports from the Memorized Reports list.	NextGen EPM User Guide, Version 5.6 SP1, p. 409-411	1/10/2012	n.a.
983627	MRH’s Citrix Server MRHNGCTX03 had an HD failure with the OS mirror and needs to be rebuilt.	NextGen Implementation Start-Up Guide, p. 77	1/17/2012	3/29/2012

## Attachment – List of 30+ Day Defects

Incident #	Incident Description	Relevant User Material(s)	Open Date	Close Date
994193	User receives error messages whenever trying to run memorized appointment reports.	NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 290	2/1/2012	8/12/2012
996220	Unable to print prescriptions.	NextGen EHR User Guide, Version 5.6 SP1, p. 600	2/6/2012	3/9/2012
996684	Orthopedic template allows users to submit charges to “Super Bill” when performing a joint injection or aspiration without first requiring the user to perform the “verify charges” action.	Software License & Services Agreement, Appendix 1, p. 1	2/6/2012	4/2/2013
996740	Procedures template does not generate procedure/test instructions documents.	Software License & Services Agreement, Appendix 1, p. 1 NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 206 NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 170	2/6/2012	11/23/2013
996890	Patient graph displays single digit numbers where the date should be, and the system freezes when a user tries to create a weight graph.	NextGen EHR User Guide, Version 5.6 SP1, p. 819	2/7/2012	5/10/2012
996998	User wants to know if the allergy suite will be available in KBM 8.0.2.	NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 77	2/7/2012	1/31/2014

## Attachment – List of 30+ Day Defects

Incident #	Incident Description	Relevant User Material(s)	Open Date	Close Date
		Software License & Services Agreement, Appendix 1, p. 1		
1003955	Cannot print letters properly from the Patient Demo Sheet when using Citrix and Fat client.	NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 208	2/16/2012	3/26/2012
		NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 224		
		NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 275		
		NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 293		
1004356	Cannot print patient documents and prescriptions to the correct printers or with the correct print settings.	NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 208	2/16/2012	3/27/2012
		NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 224		
		NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 275		
		NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 293		

## Attachment – List of 30+ Day Defects

Incident #	Incident Description	Relevant User Material(s)	Open Date	Close Date
1008386	The lymphatic physical exam is deleting itself and populating incorrectly on the master documents. The referral documents are also populating incorrectly.	NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 116-121	2/23/2012	12/20/2012
1009402	Users cannot add to the orders compendium or change the NextGen codes for the labs to reflect the actual CPT codes.	NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 86	2/27/2012	12/21/2012
1016341	Charges for OB/GYN “wet prep” procedure are not being processed to the superbill when using the OB/GYN quick examination template.	Software License & Services Agreement, Appendix 1, p. 1	3/7/2012	4/21/2013
1016898	User receives “error 5 and -2147467261” messages when trying to document a lymphatic physical exam.	NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 116-121	3/8/2012	4/10/2012
1023937	When using the “My Plan” template, the previous ordering physician is pre-populated into the description/message field rather than the current ordering physician.	NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 22	3/20/2012	1/31/2014
1027037	Provider/resource that is set in EPM does not automatically flow to EHR as a default provider in the four point check, provider drop down menu.	NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 237	3/23/2012	1/31/2014
1027743	Practitioners cannot document review of systems because the ‘gender’ field in the patient demographics module changes to a value of ‘1’ without warning.	NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 83-84	3/26/2012	12/29/2012

## Attachment – List of 30+ Day Defects

Incident #	Incident Description	Relevant User Material(s)	Open Date	Close Date
1032303	Referral document will not pull the appointment time, and the insurance macro will not pull the correct information.	NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 186	4/2/2012	12/20/2012
1033941	The pediatric behavior HPI template does not populate details on the SOAP or the master IM.	Software License & Services Agreement, Appendix 1, p. 1	4/4/2012	12/20/2012
		NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 65-66		
1033944	OB/GYN “vaginal itching” template populates macros into the description field and into the master document.	Software License & Services Agreement, Appendix 1, p. 1	4/4/2012	12/26/2012
1034040	Injury HPI prepopulates and pulls forward information from the previous injury even if the "initial" radio button is selected.	NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 65	4/4/2012	11/23/2013
1045628	“Telephone call” template does not always populate the “task to” box.	NextGen EHR User Guide, Version 5.6 SP1, p. 218	4/24/2012	7/20/2012

## Attachment – List of 30+ Day Defects

Incident #	Incident Description	Relevant User Material(s)	Open Date	Close Date
1064487	Upon using a PIN to log-in, add a second identifier in conjunction to the pin. There have been instances where users have accidentally transversed numbers in their PIN and have been logged in under another user for an entire day and generating patient documents, etc. under someone else. This is a patient safety and could be a legal issue as we had a provider logged in under a nurse for a day and all of her documents generated under the nurse.	NextGen EHR User Guide, Version 5.6 SP1, p. 10	5/24/2012	1/31/2014
1064494	Users are receiving claim edit rejections with the following error message: Special Program code (2300 CLM12) is invalid EPSDT or CHAP (01).	NextGen EPM User Guide, Version 5.6 SP1, p. 260	5/24/2012	8/12/2012
1100546	“Telephone call” template does not always populate the “task to” box.	NextGen EHR User Guide, Version 5.6 SP1, p. 218	7/23/2012	12/30/2012
1144042	When trying to launch EPM within EHR from a Citrix connection, user receive the following error message: “Station record not found for the current practice. Possible cause: Attempted sync of patient across practices is not supported.”	NextGen EHR User Guide, Version 5.6 SP1, p. 21	9/26/2012	11/7/2012

## Attachment – List of 30+ Day Defects

Incident #	Incident Description	Relevant User Material(s)	Open Date	Close Date
1165516	The “smoking cessation counseling status” is being updated even when the user is not checking this and when the patient does not have a smoking history.	NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 101-103	10/29/2012	11/23/2013
1169200	When attempting to run the “Claim Status Import” report from EPM, it returns an error message: “Error - Internal error attempting to run report. Check errorlog for details IRC 2714. Contact Tech support.”	NextGen EPM User Guide, Version 5.6 SP1, p. 126	11/5/2012	n.a.
1182309	A default rendering is automatically placed on a chart when the chart has last been touched by a nurse.	NextGen ICS Guide, Version 5.6 SP1, p. 40-41	11/28/2012	2/1/2013
1190719	User receives error when trying to set up memorized report package to task on the BBP.	NextGen EPM Background Business Processor Guide, Version 5.6 SP1, p. 73	12/11/2012	10/10/2013
1193322	Unable to send prescriptions to the pharmacy because SureScripts is down.	NextGen EHR e-Prescribing Functionality Guide, Version 5.6 SP1, p. 48-51	12/13/2012	2/26/2013
1210703	On some OB/GYN patients the ‘currently pregnant’ radio button automatically unpopulates after the patient has been seen several times.	Software License & Services Agreement, Appendix 1, p. 1	1/15/2013	4/20/2013
1215992	User is unable to sort by the “Qualifer 2” column on the “plan details” tab when he selects the picklist for “My Phrases.”	NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 144	1/23/2013	1/31/2014



## Attachment – List of 30+ Day Defects

Incident #	Incident Description	Relevant User Material(s)	Open Date	Close Date
1218510	Cannot export SIM library listing report to Microsoft Excel.	NextGen EPM Background Business Processor Guide, Version 5.6 SP1, p. 407	1/25/2013	12/4/2013
1229300	Medication indexes are incorrect.	NextGen EHR e-Prescribing Functionality Guide, Version 5.6 SP1, p. 686	2/11/2013	4/3/2013
1233368	Claim is splitting into two claims, even though the providers are the same.	NextGen EPM Background Business Processor Guide, Version 5.6 SP1, p. 293-293	2/15/2013	3/29/2013
1250755	Because not all end users have a default 'home' template in EHR, not all end users are able to navigate to templates other than the "Telephone Call" template for mere patient communications.	NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 32 Software License & Services Agreement, Appendix 1, p. 1	3/14/2013	1/31/2014
1250914	The 'Patient Demographic template' in EHR is listing "work phone," which conflicts with the "day phone" description in EPM. Patient relation information does not flow to this module from EPM for nursing staff to see or review.	NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 351	3/14/2013	1/31/2014
1251012	User cannot locate an EHR task aging or analysis report, and cannot monitor timely completion of EHR tasks.	NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 281	3/14/2013	1/31/2014

## Attachment – List of 30+ Day Defects

<b>Incident #</b>	<b>Incident Description</b>	<b>Relevant User Material(s)</b>	<b>Open Date</b>	<b>Close Date</b>
1251038	The anticoagulation module does not correctly populate the history grids. The dosing does not flow to the documents if “copy last dosage” is used.	NextGen EHR User Guide, Version 5.6 SP1, p. 207	3/14/2013	4/21/2013
1253009	Users should be able to add to an allergy in the “allergy” module in the fields of “severity,” “reaction,” or “comments” on any encounter regardless of whether it is the encounter the allergy was originally entered on. Once the fields have been entered they should then lock.	NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 77	3/18/2013	1/31/2014
1261141	“Prenatal Record” Crystal Report does not have a field for entering a patient’s height.	NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 292-294	3/28/2013	1/31/2014
1261175	“Prenatal Record” Crystal Report does not have the patient’s phone number.	NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 292-294	3/28/2013	1/31/2014
1263700	When a user saves a task on the “Orders Management” template it fires a picklist behind the EHR window and freezes the application. Also, on subsequent saves of a task, the pick list does not fire the second time but neither does the task list.	NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p 87, 195	4/2/2013	10/9/2013

## Attachment – List of 30+ Day Defects

Incident #	Incident Description	Relevant User Material(s)	Open Date	Close Date
1276016	When choosing a specific multi view group and then moving forward by day in EPM, an unhandled exception error fires and freezes the software. There is also an incorrect index listed on the advisor.	NextGen EPM User Guide, Version 5.6 SP1, p. 425	4/19/2013	n.a.
1276028	Rx Hub is producing errors in communication services.	NextGen EHR e-Prescribing Functionality Guide, Version 5.6 SP1, p. 7	4/19/2013	5/30/2013
1282301	When using the OB/GYN template “Assess/Plan” and adding an assessment code from common assessment, or choosing an assessment code from the patients diagnosis history, the custom plan template is not being updated with the codes.	NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 345, 354 Software License & Services Agreement, Appendix 1, p. 1	4/29/2013	8/9/2013
1289469	End of day Rx report is not pulling two e-prescribed insulin medications.	NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 292-294	5/8/2013	5/13/2014
1308274	User would like to be able to generate Crystal Reports.	NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 293	6/5/2013	9/13/2013

## Attachment – List of 30+ Day Defects

Incident #	Incident Description	Relevant User Material(s)	Open Date	Close Date
1315971	User needs a report that can export in a pipe-delimited format for all self pay encounters that mimic the EDI file, without changing the billing status of the patient account.	NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 281	6/14/2013	9/25/2013
1316020	User needs modifications to custom Crystal Report.	NextGen EHR User Guide, Version 5.6 SP1, p. 742	6/14/2013	9/13/2013
		NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 293		
1329201	When entering the E&M coding screen an error pops up stating "unable to retrieve binary image data from the database," then the EHR application crashes.	NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 175-185	7/3/2013	10/9/2013
1339828	User needs to have voice reminders set up for Mad River Family Practice.	NextGen EPM User Guide, Version 5.6 SP1, p. 207	7/19/2013	9/4/2013
1347995	In the Orthopedics suite of templates, the “Proc joint injection” pop up is not calculating the units correctly for J0702 Betamethasone. If you give 1mL of 6mg it should be 2 units billed. If you give 2 mL then 4 units should be billed. It is only billing 1 unit no matter how much Betamethasone is used.	NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 120	8/1/2013	11/23/2013

# **Attachment 4**

## Attachment – List of 30+ Day Defects Relating to Templates

Incident #	Incident Description	Relevant User Material(s)	Open Date	Close Date
789547	User receives data type conversion errors when trying to edit “Weekly Templates” within “Scheduling Administration.”	NextGen EPM User Guide, Version 5.6 SP1, p. 113-117	2/24/2011	n.a.
829459	Unable to create fields and import/export documents into a form template.	NextGen EPM User Guide, Version 5.6 SP1, p. 62	5/6/2011	8/12/2012
869002	Patient tracking numbers will not show in the “Workflow - Appointments” area.	Software License & Services Agreement, Appendix 1, p. 1 NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 16 NextGen EPM User Guide, Version 5.6 SP1, p. 188	7/14/2011	12/26/2012
879162	Incorrect user name appears on patient documents created during chart abstraction.	NextGen EHR User Guide, Version 5.6 SP1, p. 380 NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 209	8/2/2011	12/1/2011
881062	Cannot print documents using OB/GYN template.	Software License & Services Agreement, Appendix 1, p. 1 NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 208 NextGen EHR User Guide, Version 5.6 SP1, p. 384	8/4/2011	11/1/2011

## Attachment – List of 30+ Day Defects Relating to Templates

Incident #	Incident Description	Relevant User Material(s)	Open Date	Close Date
881090	Nurse practitioner receives “invalid date” error message when trying to add a check mark to “system for review” on the OB/GYN post-visit template.	NextGen EHR User Guide, Version 5.6 SP1, p. 190	8/4/2011	12/20/2012
		Software License & Services Agreement, Appendix 1, p. 1		
890045	Primary care physicians entered in EPM are not appearing on home templates.	NextGen EHR User Guide, Version 5.6 SP1, p. 114	8/19/2011	1/17/2012
892654	Physician observations are not being saved or printed when conducting an OB/GYN patient examination.	NextGen EHR User Guide, Version 5.6 SP1, p. 481-496	8/24/2011	4/20/2013
		Software License & Services Agreement, Appendix 1, p. 1		
909666	Subjective information does not save when using “Internal Meds - sinus problem acute.”	Software License & Services Agreement, Appendix 1, p. 1	9/21/2011	12/26/2012
		NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 248-252		
925466	When ordering a urine analysis with scope in the urology template, the results are not filling into the home template.	Software License & Services Agreement, Appendix 1, p. 1	10/14/2011	12/16/2013
958059	Lab requisitions are being printed with the incorrect diagnosis list.	NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 185-189	12/6/2011	4/21/2013

## Attachment – List of 30+ Day Defects Relating to Templates

Incident #	Incident Description	Relevant User Material(s)	Open Date	Close Date
959508	The Urology – Catheterization/Intravesical treatment procedure template is generating incorrect procedure codes.	Software License & Services Agreement, Appendix 1, p. 1	12/8/2011	3/2/2014
978337	Users receive error message indicating “unknown report type” when trying to access the Management Reports from the Memorized Reports list.	NextGen EPM User Guide, Version 5.6 SP1, p. 409-411	1/10/2012	n.a.
996684	Orthopedic template allows users to submit charges to “Super Bill” when performing a joint injection or aspiration without first requiring the user to perform the “verify charges” action.	Software License & Services Agreement, Appendix 1, p. 1	2/6/2012	4/2/2013
996740	Procedures template does not generate procedure/test instructions documents.	Software License & Services Agreement, Appendix 1, p. 1 NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 206 NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 170	2/6/2012	11/23/2013
996890	Patient graph displays single digit numbers where the date should be, and the system freezes when a user tries to create a weight graph.	NextGen EHR User Guide, Version 5.6 SP1, p. 819	2/7/2012	5/10/2012



## Attachment – List of 30+ Day Defects Relating to Templates

Incident #	Incident Description	Relevant User Material(s)	Open Date	Close Date
996998	User wants to know if the allergy suite will be available in KBM 8.0.2.	NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 77 Software License & Services Agreement, Appendix 1, p. 1	2/7/2012	1/31/2014
1008386	The lymphatic physical exam is deleting itself and populating incorrectly on the master documents. The referral documents are also populating incorrectly.	NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 116-121	2/23/2012	12/20/2012
1009402	Users cannot add to the orders compendium or change the NextGen codes for the labs to reflect the actual CPT codes.	NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 86	2/27/2012	12/21/2012
1016341	Charges for OB/GYN “wet prep” procedure are not being processed to the superbill when using the OB/GYN quick examination template.	Software License & Services Agreement, Appendix 1, p. 1	3/7/2012	4/21/2013
1016898	User receives “error 5 and -2147467261” messages when trying to document a lymphatic physical exam.	NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 116-121	3/8/2012	4/10/2012
1023937	When using the “My Plan” template, the previous ordering physician is pre-populated into the description/message field rather than the current ordering physician.	NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 22	3/20/2012	1/31/2014

## Attachment – List of 30+ Day Defects Relating to Templates

Incident #	Incident Description	Relevant User Material(s)	Open Date	Close Date
1027743	Practitioners cannot document review of systems because the 'gender' field in the patient demographics module changes to a value of '1' without warning.	NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 83-84	3/26/2012	12/29/2012
1032303	Referral document will not pull the appointment time, and the insurance macro will not pull the correct information.	NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 186	4/2/2012	12/20/2012
1033941	The pediatric behavior HPI template does not populate details on the SOAP or the master IM.	Software License & Services Agreement, Appendix 1, p. 1	4/4/2012	12/20/2012
		NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 65-66		
1033944	OB/GYN "vaginal itching" template populates macros into the description field and into the master document.	Software License & Services Agreement, Appendix 1, p. 1	4/4/2012	12/26/2012
1034040	Injury HPI prepopulates and pulls forward information from the previous injury even if the "initial" radio button is selected.	NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 65	4/4/2012	11/23/2013
1045628	"Telephone call" template does not always populate the "task to" box.	NextGen EHR User Guide, Version 5.6 SP1, p. 218	4/24/2012	7/20/2012
1100546	"Telephone call" template does not always populate the "task to" box.	NextGen EHR User Guide, Version 5.6 SP1, p. 218	7/23/2012	12/30/2012

## Attachment – List of 30+ Day Defects Relating to Templates

Incident #	Incident Description	Relevant User Material(s)	Open Date	Close Date
1165516	The “smoking cessation counseling status” is being updated even when the user is not checking this and when the patient does not have a smoking history.	NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 101-103	10/29/2012	11/23/2013
1210703	On some OB/GYN patients the ‘currently pregnant’ radio button automatically unpopulates after the patient has been seen several times.	Software License & Services Agreement, Appendix 1, p. 1	1/15/2013	4/20/2013
1215992	User is unable to sort by the “Qualifer 2” column on the “plan details” tab when he selects the picklist for “My Phrases.”	NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 144	1/23/2013	1/31/2014
1250755	Because not all end users have a default ‘home’ template in HER, not all end users are able to navigate to templates other than the “Telephone Call” template for mere patient communications.	NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 32 Software License & Services Agreement, Appendix 1, p. 1	3/14/2013	1/31/2014
1250914	The ‘Patient Demographic template’ in EHR is listing “work phone,” which conflicts with the “day phone” description in EPM. Patient relation information does not flow to this module from EPM for nursing staff to see or review.	NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 351	3/14/2013	1/31/2014
1251012	User cannot locate an EHR task aging or analysis report, and cannot monitor timely completion of EHR tasks.	NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 281	3/14/2013	1/31/2014

## Attachment – List of 30+ Day Defects Relating to Templates

Incident #	Incident Description	Relevant User Material(s)	Open Date	Close Date
1251038	The anticoagulation module does not correctly populate the history grids. The dosing does not flow to the documents if “copy last dosage” is used.	NextGen EHR User Guide, Version 5.6 SP1, p. 207	3/14/2013	4/21/2013
1253009	Users should be able to add to an allergy in the “allergy” module in the fields of “severity,” “reaction,” or “comments” on any encounter regardless of whether it is the encounter the allergy was originally entered on. Once the fields have been entered they should then lock.	NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 77	3/18/2013	1/31/2014
1263700	When a user saves a task on the “Orders Management” template it fires a picklist behind the EHR window and freezes the application. Also, on subsequent saves of a task, the pick list does not fire the second time but neither does the task list.	NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p 87, 195	4/2/2013	10/9/2013
1282301	When using the OB/GYN template “Assess/Plan” and adding an assessment code from common assessment, or choosing an assessment code from the patients diagnosis history, the custom plan template is not being updated with the codes.	NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 345, 354	4/29/2013	8/9/2013
		Software License & Services Agreement, Appendix 1, p. 1		

## Attachment – List of 30+ Day Defects Relating to Templates

Incident #	Incident Description	Relevant User Material(s)	Open Date	Close Date
1308274	User would like to be able to generate Crystal Reports.	NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 293	6/5/2013	9/13/2013
1316020	User needs modifications to custom Crystal Report.	NextGen EHR User Guide, Version 5.6 SP1, p. 742	6/14/2013	9/13/2013
		NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 293		
1329201	When entering the E&M coding screen an error pops up stating "unable to retrieve binary image data from the database," then the EHR application crashes.	NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 175-185	7/3/2013	10/9/2013
1347995	In the Orthopedics suite of templates, the "Proc joint injection" pop up is not calculating the units correctly for J0702 Betamethasone. If you give 1mL of 6mg it should be 2 units billed. If you give 2 mL then 4 units should be billed. It is only billing 1 unit no matter how much Betamethasone is used.	NextGen EHR v5.6 SP1/KBM 7.9, Core Group Training Workbook, p. 120	8/1/2013	11/23/2013

# **Attachment 5**

## Attachment – List of Defects Closed Citing Need to Upgrade

Incident #	Incident Description	Incident Resolution	Open Date	Close Date
818973	<p>“Go Live is tomorrow 4/19 *** Application freezing / Citrix sessions locked. Hardware &amp; Citrix purchased via NextGen. User Connie Farley was completely locked up. The citrix session was not responding. We had to ctrl/alt/del and close the citrix session which wasn’t responding. We were then able to launch a new session and open nextgen (of course it tells you that the program is already running). I noticed in her task bar that there was citrix session that was timed out. Before the lock up it was working everything was very slow. She mentioned that the screens come up very slow. This practice has a fiber connection”</p>	<p>“Agian [<i>sic</i>] not a good answer to this see below and then going to close the ticket. Hi Shawn We are still unable to figure out what might be causing this issue. Are you still on NextGen version 5.6.5.59? If so are you considering upgrading to the newer version? I would be curious to see if that would resolve your issues. Thanks Jude Note: This email is sent with reference to Incident #820494. Please mention reference number 'ref#24-820494' for further email communications. ref#24-820494”</p>	4/18/2011	5/15/2011
820494	<p>“&gt;&gt; Go Live issue - This is Day 2 of Go Live &gt;&gt; We are getting this error consistently on several different computer that are using the Citrix Client. As we are live at this time it is affecting our end users. Once they click out of the error they are able to get into NextGen Description: Stopped working Problem signature: Problem Event Name: CLR20r3 Problem Signature 01: nextgenpm.exe Problem Signature 02: 5.6.5.59 Problem Signature 03: 4d23a4b2 Problem Signature 04: NextGen.Epm.MainApplication .General Problem Signature 05: 5.6.5.59 Problem Signature 06: 4d23a47e Problem Signature 07: 2196 Problem Signature 08: 26e3 Problem Signature 09: System.NullReferenceException OS Version: 6.1.7600.2.0.0.16.7 Locale ID: 1033 Read our privacy statement online: <a href="http://go.microsoft.com/fwlink/">http://go.microsoft.com/fwlink/</a></p>	<p>“Closing this ticket and will look into this at a later time. You answer was not encouraging [<i>sic</i>] at all. see below. Hi Shawn We are still unable to figure out what might be causing this issue. Are you still on NextGen version 5.6.5.59? If so are you considering upgrading to the newer version? I would be curious to see if that would resolve your issues. Thanks Jude Note: This email is sent with reference to Incident #820494. Please mention reference number 'ref#24-820494' for further email communications. ref#24-820494”</p>	4/20/2011	5/15/2011

## Attachment – List of Defects Closed Citing Need to Upgrade

Incident #	Incident Description	Incident Resolution	Open Date	Close Date
	?linkid=104288&clcid=0x0409 If the online privacy statement is not available please read our privacy statement offline: C:\Windows\system32\en-US\erofflps.txt”			
869002	“in pediatrics practice - the patient's tracking would not show in the workflow - appointments area. the room nor the status will display. it would work for certain patients but not others.”	“This issue has been reviewed and determined to be resolved in KBM 8.0 SP1 and higher. Please contact Support to schedule an upgrade if you are on a version of KBM lower than 8.0 SP1. Thank you for using NextGen Support.”	7/14/2011	12/26/2012
881090	“When a nurse practitioner goes to the OB post visit template and check marks system for review it goes to task for physician and gives an invalid date value error message.”	“This issue has been reviewed and determined to be resolved in KBM 8.0 SP1 and higher. Please contact Support to schedule an upgrade if you are on a version of KBM lower than 8.0 SP1. Thank you for using NextGen Support.”	8/4/2011	12/20/2012
892654	“URGENT - EHR When the physician's are documenting a OBGYN exam not all the items that were choosen [sic] are saved or printed. I can go back & see all the marks that were made. When we close and save again they information will print. I can recreate it in test.”	“This issue has been reviewed and determined to be resolved in KBM 8.1 and higher. Please contact Support to schedule an upgrade if you are on a version of KBM lower than 8.1. Thank you for using NextGen Support.”	8/24/2011	4/20/2013
909666	“in internal meds when using synus [sic] problem acute all the subjective info entered does not save.”	“This issue has been reviewed and determined to be resolved in KBM 8.0 and higher. Please contact Support to schedule an upgrade if you are on a version of KBM lower than 8.0. Thank you for using NextGen Support.”	9/21/2011	12/26/2012
925466	“in urology template when ordering a urine analysis with scope. the results are not filling into the home template.”	“This issue was reviewed and resolved in the general release version of KBM 8.3. Please upgrade to the latest KBM version to receive the fix for this issue. Thank you for using Nextgen Support.”	10/14/2011	12/16/2013



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Incident #	Incident Description	Incident Resolution	Open Date	Close Date
942458	“When printing appointment letters on demand if you choose the quick print it will jumble the letter each and every time. If you choose to use the manual print icon it still jumbles the letter but only on the first time of printing. Each letter for the rest of the day that you print will not jumble as long as you use the manual print icon. But it makes no sense as to why the letter will jumble the first time of the day/login. And why it makes a difference when you use the quick print vs. the manual print. Is this a nextgen version printer issue? I know that there are other print issues within our version such as in order to print a landscape document (even when the document is saved as such) you have to do a print preview then ok then do a print. If you do not do the print preview and select ok there it will print portrait every time regardless of how the document is saved.”	“this is an error that will resolve with upgrade”	11/9/2011	12/9/2011
958059	“The lab requisitions are printed with the diagnosis list that is being pulled from the provider's assessment for that visit not the diagnosis that is being used to order that particular lab. See attached workflow example.”	“This issue has been reviewed and determined to be resolved in KBM 8.1 and higher. Please contact Support to schedule an upgrade if you are on a version of KBM lower than 8.1. Thank you for using NextGen Support.”	12/6/2011	4/21/2013
996684	“KBM 7.9 SP1 Please see attached documentation.”	“This issue has been reviewed and determined to be resolved in KBM 8.0 SP1 and higher. Please contact Support to schedule an upgrade if you are on a version of KBM lower than 8.0 SP1. Thank you for using NextGen Support.”	2/6/2012	4/2/2013
996740	“KBM 7.9 SP1 Please See Attached Documentation. Document not generatinog [sic] due to template defect.”	“This issue was reviewed and is resolved in KBM 8.3 and higher. Please upgrade to the latest KBM version to receive the fix for this	2/6/2012	11/23/2013

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Incident #	Incident Description	Incident Resolution	Open Date	Close Date
		<p>issue. Thank you for using Nextgen Support.</p> <p>Resolution Details:</p> <p>ngkbm_custom_dbp_item_dtl :- Modified the length of the txt_qualifier_1 &amp; txt_qualifier_2 to 100.</p> <p>ngkbm_custom_dbpicklists :- Modified the length of the txt_item_qualifier1 &amp; txt_item_qualifier2 to 100 and updated the values of qualifier1 and qualifier2 in the grid.</p> <p>proc_test_instruct :- Replaced Quick Note button with ""My Phrases"" and ""Manage My Phrases"" buttons.</p> <p>ngkbm_remove_dbp_item_dtl :- Modified the length of @txt_qualifier_1 and @txt_qualifier_2 from 75 to 100.</p> <p>ngkbm_get_dbpicklist_items :- Modified the length of @qualifier_1 and @qualifier_2 from 75 to 100.</p> <p>Affected Content: Templates:</p> <p>ngkbm_custom_dbp_item_dtl</p> <p>ngkbm_custom_dbpicklists</p> <p>proc_test_instruct</p> <p>Stored Procedures:</p> <p>ngkbm_get_dbpicklist_items</p> <p>ngkbm_remove_dbp_item_dtl"</p>		
1008386	"the lymphatic physical exam is deleting itself and populating incorrectly on the master documents. Also the referral documents are populating incorrectly. This alert pops up after you document a lymphatic physical exam once you save and close the physical and generate the document the document is generating incorrect information. If you close the patient and then re-enter the patient chart the	<p>"This issue has been reviewed and determined to be resolved in KBM 8.0 SP1 and higher. Please contact Support to schedule an upgrade if you are on a version of KBM lower than 8.0 SP1.</p> <p>Thank you for using NextGen Support."</p>	2/23/2012	12/20/2012

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Incident #	Incident Description	Incident Resolution	Open Date	Close Date
	lymphatic exam is either completely gone or partially gone within the template.”			
1009402	“KBM 7.9 SP1 Review previous NG Ticket #902955. We were told that our orders compendium would be fixed with the current version that we are on. We still cannot add to this compendium effectively change the NG codes for the labs to reflect the actual cpt codes etc. Please review and advise.”	“This issue has been reviewed and determined to be resolved in KBM 8.1 and higher. Please contact Support to schedule an upgrade if you are on a version of KBM lower than 8.1. Thank you for using NextGen Support.”	2/27/2012	12/21/2012
1016341	“version 5.6 sp1 ud5 KBM 7.9 sp1 when in the gyn quick exam template and choosing the wet prep check box and then submitting to superbill it will not process any charges to the superbill”	“This issue has been reviewed and determined to be resolved in KBM 8.0 SP1 and higher. Please contact Support to schedule an upgrade if you are on a version of KBM lower than 8.0 SP1. Thank you for using NextGen Support.”	3/7/2012	4/21/2013
1027743	“On 6 known patients the gender field in the patient demographics has been changed to the value of 1 without warning. This prevents the practitioner from being able to document reveiw [sic] of systems. It can be edited and changed back. Why would this field in particular change on its own and with only a handful of patients?”	“This issue has been reviewed and determined to be resolved in KBM 8.0 SP1 and higher. Please contact Support to schedule an upgrade if you are on a version of KBM lower than 8.0 SP1. Thank you for using NextGen Support.”	3/26/2012	12/29/2012
1032303	“The referral document will not pull the appointment time. On this same document the insurance macro is not pulling the correct information.”	“This issue has been reviewed and determined to be resolved in KBM 8.0 SP1 and higher. Please contact Support to schedule an upgrade if you are on a version of KBM lower than 8.0 SP1. Thank you for using NextGen Support.”	4/2/2012	12/20/2012
1033941	“The pediatric behavior HPI template only when used on radio button 2 will not populate the detail on the soap or the master im.”	“This issue has been reviewed and determined to be resolved in KBM 8.0 SP1 and higher. Please contact Support to schedule an upgrade if you are on a version of KBM	4/4/2012	12/20/2012

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Incident #	Incident Description	Incident Resolution	Open Date	Close Date
		lower than 8.0 SP1. Thank you for using NextGen Support.”		
1033944	“version 5.6.8.13 KBM 7.9 SP1 On the vaginal itching template it populates macros into the description field. This then populates into the master document.”	“This issue has been reviewed and determined to be resolved in KBM 8.0 SP1 and higher. Please contact Support to schedule an upgrade if you are on a version of KBM lower than 8.0 SP1. Thank you for using NextGen Support.”	4/4/2012	12/26/2012
1034040	"version 5.6.8.13 KBM 7.9 SP1 injury HPI prepopulates and pulls forward information from the previous injury even if the 'initial' raido [sic] button is selected."	“This issue was reviewed and is resolved in KBM 8.3 and higher. Please upgrade to the latest KBM version to receive the fix for this issue. Thank you for using Nextgen Support. Resolution Details: Removed copy forward options for Diagnostics/Treatment Trauma Work Related. Added assign field value triggers to clear values on populate of fields Diagnostics/Treatment Trauma Work Related. Affected Content:Template:hpi_injury”	4/4/2012	11/23/2013
1072042	“KBM 8.1 REQUEST contact Tonya.Hurst@pathforwardit.com current version 5.6 UD4 upgrading to UD5 by 7/23/2012. current KBM 7.9 SP1. We want to upgrade to 8.1”	“client not interested in kbm upgrade at this time.”	6/7/2012	2/1/2013
1100546	“KBM 7.9 SP1 Version 5.6 SP1 UD5 Please have someone contact me regarding ticket number 1045628. I am testing this out today in our production environment and I cannot seem to follow the steps to make this work.”	“This issue has been reviewed and determined to be resolved in KBM 8.0 SP1 and higher. Please contact Support to schedule an upgrade if you are on a version of KBM lower than 8.0 SP1. Thank you for using NextGen Support”	7/23/2012	12/30/2012
1165516	“Version 5.6.9.12 KBM 7.9 SP1 The smoking cessation counseling status is being	“This issue was reviewed and is resolved in KBM 8.3 and higher. Please upgrade	10/29/2012	11/23/2013

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Incident #	Incident Description	Incident Resolution	Open Date	Close Date
	updated even when the user is not checking this and also being updated even when the patient does not have a smoking history.”	to the latest KBM version to receive the fix for this issue. Thank you for using Nextgen Support.”		
1210703	“Version 5.6.9.12 KBM 7.9 SP1 On some OB patients the currently pregnant radio button unpopulates after the patient has been seen several times. There is no pattern that we can establish on how this is happening. Is this a known issue?”	“This issue has been reviewed and determined to be resolved in KBM 8.0.4 and 8.1 and higher. Please contact Support to schedule an upgrade if you are on a version of KBM lower than 8.0.4. Thank you for using NextGen Support.”	1/15/2013	4/20/2013
1229300	“We have three incorrect indexes that will need fixed.”	“This issue has been resolved in the latest Medication update. Please be sure to upgrade to the latest general release version 5.7 HF47 and install the latest Medication Update posted 3/15/13. To upgrade to KBM 8.x please open a Support Ticket Requesting a KBM 8.x upgrade. The latest KBM Service Packs can be found in the Knowledgebase Module Section of the Downloads page under Client Resources on <a href="http://www.nextgen.com">www.nextgen.com</a> . Other helpful information can be found under Client Resources on <a href="http://www.nextgen.com">www.nextgen.com</a> .”	2/11/2013	4/3/2013
1282301	“version 5.6.9.12 KBM 7.9 SP1 When using the OB/GYN template Assess/Plan and adding an assessment code from common assessment or choosing an assessment code from the patients diagnosis history it does not update the custom plan template with the codes.”	“This issue was reviewed and resolved in KBM 8.1.6 and is resolved by a design change in KBM 8.3. Please upgrade to 8.1.6 or higher to resolve this issue or use the workarounds in the KI to repair. Thank you for using Nextgen Support.”	4/29/2013	8/9/2013
1347995	“On the Proc joint injection pop up in the ortho suite of templates it is not calculating the units correctly for J0702 Betamethasone. If you give	“This issue was reviewed and resolved in KBM 8.3. Please upgrade to the latest version KBM to receive the fix for this issue.	8/1/2013	11/23/2013

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Incident #	Incident Description	Incident Resolution	Open Date	Close Date
	1mL of 6mg it should be 2 units billed. If you give 2 mL then 4 units should be billed. It is only billing 1 unit no matter how many mL given.”	Thanks for using Nextgen Support Resolution Details: proc_joint_injections : Modified Upload Extended Data triggers(with condition {proc_joint_injections_.txt _med_01} != "" & @location_flag != 1 to 4) to pass parameter as {proc_joint_injections_.txt _ml_01} as Dose in Button029(Verify Changes) ngkbm_insert_inj_codes : Added condition to calculate billing unit for cpt_code='J0702' Affected Content:Template : proc_joint_injections Stored Procedure : ngkbm_insert_inj_codes"		
1350631	“Urology specialty template set Prostate US BX - Procedure template You cannot populate two checkboxes in particular as a saved procedure favorite. If you do you will have to uncheck and recheck them anyway to get the template to submit to superbill properly.”	“This issue is resolved in 8.1. Please be sure to upgrade to the latest general release version 5.7 HF66 and install the latest Medication Update. To upgrade to KBM 8.1 please open a Support Ticket Requesting a KBM 8.1 upgrade. The latest KBM Service Packs can be found in the Knowledgebase Module Section of the Downloads page under Client Resources on <a href="http://www.nextgen.com/">www.nextgen.com</a> < <a href="http://www.nextgen.com/">http://www.nextgen.com/</a> > . Other helpful information can be found under Client Resources on <a href="http://www.nextgen.com/">www.nextgen.com</a> < <a href="http://www.nextgen.com/">http://www.nextgen.com/</a> > .”	8/5/2013	8/5/2013
1354911	“Version 5.6.9.12 KBM 7.9 SP1 There is a template error on the E&M coding screen on the Additional E&M codes template. The code for preventive established 40-64 years is listed as 99296. This is	“Regarding your problem with the em_code template displaying the code 99296 which should be 99396 this was a known issue in 7.9 SP1 according to problem #25235. This problem can	8/12/2013	8/15/2013

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Incident #	Incident Description	Incident Resolution	Open Date	Close Date
	incorrect. It should be 99396. See attached documentation.”	be fixed by upgrading to KBM version 8.1. I will link the problem description below for you to view. This ticket will close in seventy two hours please contact me if this is not a possible solution. Problem #25235 ----- ----- Full Description ----- - The label and code for Preventive established for 40 - 64 years says 99296 and it should be 99396. Client KBM Version: 7.9 Client Application Version: 5.6.4.15 Template(s): em_code Preventive Established code should be 99396 Resolution ----- ----- This issue has been reviewed and determined to be resolved in KBM 8.1 and higher. Please contact Support to schedule an upgrade if you are on a version of KBM lower than 8.1.”		
1356469	“Version 5.6.9.12 KBM 7.9 SP1 When using any telephone call template and clicking send and close then cancel the template will automatically fill in the name of the last person that the user tasked something to in the tasked too column even though nothing is really tasked.”	“This is known and linked to closed problem 25991 which is resolved in KBM 8.0.1 and higher. An upgrade would be necessary as there is no workaround or hotfix for this issue.”	8/13/2013	8/13/2013
1407518	“On occasion I have a user stating that the last page in her batch will not fiile [sic] and she is not promoted to post the batch. She will either delete the last page and then refile the second to the last page and will be able to post or has to delete the entire batch rescan refile and then post. Version 5.6.9.12 KBM 7.9 SP1”	“This issue issue [sic] is not reproducible. Please upgrade to the current general release of NextGen EPM which may be found at www.nextgen.com. Thank you”	10/23/2013	11/11/2013
1457263	“version 5.6.9.12 KBM 7.9 SP1 Template error on quick exam	“Hi Cori How are you? I apologize for the delay in	12/18/2013	1/8/2014

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Incident #	Incident Description	Incident Resolution	Open Date	Close Date
	physical exam at cranial nerves check box. The cranial nerves check boxes when populated do not update that section for physical exam and will not pull to the document unless an exteneded [ <i>sic</i> ] pop-up template is launched and then saved and closed. This is causing improper documentation. Please see attached.”	getting back to you. This is a know issue pr#41570 which is reviewed and resolved in KBM 8.1.5 and higher. Please upgrade to the latest KBM version to receive the fix for this issue or use the workaround provided. Please let us know if you have further questions as this ticket is set to autoclose in seventy two hours. Thank you - Mable Philip”		